

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/STOP PRESS: LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)

STOP PRESS:

The Local Democracy, Economic Development and Construction Act 2009 makes provision for the purposes of promoting public involvement in relation to local authorities and other public authorities, about bodies representing the interests of tenants, local freedoms and honorary titles, and the procedures of local authorities and their powers relating to insurance and the audit of entities connected with them, to establish the Local Government Boundary Commission for England and to make provision relating to local government boundary and electoral change, about local and regional development, and to amend the law relating to construction contracts. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that date: ss 25, 26, 62, 64, 68, 146-150, Sch 3. Sections 27-30, 32, 33, and 121-137 came into force on 12 January 2010 and the following provisions also come into force on that day: ss 114-117 (SI 2009/3318). The following provisions were brought into force on 25 November 2009: ss 69 (in part), 71, 84, 86, 87 (SI 2009/3087). The following provisions were brought into force on 17 December 2009: ss 88-113, 118-120 and Sch 6 (SI 2009/3318). Further provisions come into force on 1 April 2010: ss 23, 24, 31, 55-61, 63, 65-67, 69, 70, 72-83, 85, Schs 1, 2, 4, 5, 7 (in part) (SI 2009/3318). The remaining provisions come into force on a day or days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-30) Democracy and involvement

Chapter 1 (ss 1-9) Duties relating to promotion of democracy

Section 1 places a duty on principal local authorities to promote understanding of their functions and their democratic arrangements. By virtue of s 2, principal local authorities are under a duty to promote understanding among local people of public bodies which relate to the authority's area. A duty is placed on principal local authorities by s 3 to promote understanding among local people of courts boards, independent monitoring boards for prisons and immigration removal centres and Youth Offending Teams. Section 4 places a duty on principal local authorities to promote understanding among local people of lay justices. By virtue of s 5, ss 2-4 do not apply to principal local authorities if information has not been provided by the connected authorities, monitoring boards, courts boards, youth offending teams and, in the case of lay justices, the Lord Chancellor, after it has been requested of them. The appropriate national authority may produce guidance for principal local authorities on how to fulfil their duties: s 6. Section 7 deals with the Isles of Scilly. Section 8 specifies that any order made under Pt 1 Ch 1 is to be made by statutory instrument and is to be subject to negative resolution procedure. Section 9 deals with interpretation.

Chapter 2 (ss 10-22) Petitions to local authorities

Section 10 places duties on principal local authorities in relation to electronic petitions signed by those who live, work or study in local areas. Under s 11, principal local authorities are required to make, publicise and comply with a scheme for handling both paper and electronic petitions. Section 12 makes provision about the petitions to which a petition scheme must

apply. By virtue of s 13, petition schemes are required to ensure that petitions are acknowledged in writing within a time specified in the scheme. Principal local authorities are required by s 14 to take one or more steps in response to petitions which meet the specified criteria and are therefore 'active' petitions. Section 15 gives an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it. By virtue of s 16, certain senior officers of a principal local authority can be called to account at a public meeting. Under s 17, the petition organiser is given the power to ask an overview and scrutiny committee, or its equivalent in authorities not operating executive arrangements, to review the principal local authority's response to their petition, if the organiser is not satisfied with the steps taken by the authority under s 14. Section 18 sets out other issues which principal local authorities' schemes may include. The powers of the appropriate national authority to issue guidance in relation to the discharge of the petition function by principal authorities are set out by s 19. Section 20 provides that the appropriate national authority may by order make provision for the handling of petitions by any specified body. Section 21 provides that orders under Ch 2 are to be made by statutory instrument. Section 22 deals with interpretation.

Chapter 3 (ss 23, 24) Involvement in functions of public authorities

Section 23 places a duty on the authorities listed to involve representatives of interested persons in the exercise of their functions, where they consider that it is appropriate to do so. The Secretary of State may, by virtue of s 24, issue guidance on the discharge of the duties under s 23.

Chapter 4 (ss 25, 26) Housing

Section 25 makes provision for the Secretary of State to establish and give financial or other support to a body that will represent the interests, at national level, of housing tenants in England. Section 26 provides a power to the Secretary of State to nominate a body representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator and the Secretary of State and set out in the Housing and Regeneration Act 2008.

Chapter 5 (ss 27-29) Local freedoms and honorary titles

The 2009 Act s 27 makes provision for a daughter of a freeman of a city or town to be admitted as a freeman where a son would have the right to be so admitted. By virtue of s 28, the laws relating to the admission of freeman are more easily amended. The power to confer the title of 'honorary freeman' is extended by s 29 to all principal councils, parish and community councils, and charter trustees in England.

Chapter 6 (s 30) Politically restricted posts

Section 30 removes the requirement imposed by the Local Government and Housing Act 1989 s 2 for local authorities to prepare and maintain a list of posts that exceed a specified salary, and which as a consequence mean that the post-holder is subject to political restrictions.

Part 2 (ss 31-54) Local authorities: governance and audit

Chapter 1 (ss 31-33) Governance

Section 31 requires local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer to support the work of the authority's overview and scrutiny committee. By virtue of s 32, the scope of joint overview and scrutiny arrangements are broadened so that joint overview and scrutiny committees may be set up by any two or more local authorities, so that such committees may make reports and recommendations on any matter, other than excluded matter, and so that associated authorities may be required to provide any information to joint overview and scrutiny

committees, other than that relating to crime and disorder matters, and not just that relevant to local improvement targets. Section 33 extends the legislative competence of the National Assembly for Wales to make Measures of the National Assembly for Wales.

Chapter 2 (ss 34, 35) Mutual insurance

Section 34 provides that a qualifying authority may become a member of a body corporate whose objects must be those specified and all of whose members are other qualifying bodies. Section 35 lists the qualifying authorities that are being provided with the power to become members of a mutual insurance body corporate.

Chapter 3 (ss 36-54) Audit of entities connected with local authorities

Section 36 provides that the relevant audit authority may appoint a person to carry out audit functions in relation to a local authority entity which meets certain qualifying criteria. By virtue of s 37, a local authority must notify the entity and the relevant audit authority if an entity meets, or ceases to meet, the qualifying conditions or ceases to be connected with the authority. Under s 38, the audit authority may appoint a person to carry out an audit of a local authority entity where the entity appears to the audit authority to meet the qualifying criteria. Where an appointed auditor dies, is dismissed, or is unable or unwilling to act, the audit authority may appoint a replacement auditor for that financial year: s 39. Section 40 provides that, unless the entity otherwise requests, the audit authority must not make an appointment if the entity appears to be exempt from statutory audit. Section 41 specifies who is eligible for appointment as an auditor. The terms of appointment for an auditor are set out by s 42. Where an audit authority appoints an auditor to an entity, s 43 provides that the entity may also appoint that same auditor as its statutory auditor under the Companies Act 2006 Pt 16 (ss 475-539) or the Friendly and Industrial and Provident Societies Act 1968 s 4. The 2009 Act s 44 applies when the entity does not wish to exercise the power in s 39 and instead chooses to appoint a different auditor as its statutory auditor, or where the entity exercises the power in s 39 but then terminates the appointment, so as to provide that the audit's authority's appointed auditor has the same powers as in the 2006 Act or the 1968 Act to enable the auditor to make a report to the company, partnership or society on the annual accounts. The 2009 Act ss 45-49 provide the powers for an auditor appointed under Ch 3 to make a report in the public interest. By virtue of s 50, a fee must be paid by the entity to the appointing audit authority when an auditor discharges any functions under ss 44-49. Section 51 sets out the power of the audit authority to request information relating to the accounts audited by the auditor and any other document or information relating to the entity, which would have been available to the auditor under the powers he had. By virtue of s 52, a company which is a subsidiary of a Passenger Transport Executive is to be regarded as connected with the Integrated Transport Authority for the areas for which the executive is established. Section 53 makes general provision in respect of regulations, and s 54 deals with interpretation.

Part 3 (ss 55-68) Local government boundary and electoral change

Section 55 establishes the Local Government Boundary Commission for England as a separate corporate body, and Sch 1 contains the detailed provisions for the constitution and administration of the new body. Section 56 provides that the Local Government Boundary Commission for England must from time to time conduct a review of electoral arrangements of each principal council in England and recommend whether a change should be made to the electoral arrangements for an area, and introduces Sch 2, which sets out the criteria that the Local Government Boundary Commission for England must have regard to when conducting electoral reviews. Under s 57, a power is provided for the Local Government Boundary Commission for England to conduct a review of the area of a principal council, at that council's request, with a view to making recommendations as to whether each electoral area in the area of the principal council should return only one member. The procedure which the Local Government Boundary Commission for England must follow when conducting electoral reviews

under s 53 is set out by s 58. By virtue of s 59, the Local Government Boundary Commission for England is provided with the power to make an order to give effect to all or any of the recommendations which it makes following a review of electoral arrangements for a local government area. Various functions are transferred from the Electoral Commission and the Boundary Committee for England to the new Local Government Boundary Commission for England by s 60. Section 61 abolishes the Electoral Commission's duty to establish a Boundary Committee for England and repeals the Political Parties, Elections and Referendums Act 2000 ss 14, 15. The Electoral Commission is placed under a duty by the 2009 Act s 62 to produce one or more schemes for the transfer of property, rights and liabilities from the Electoral Commission to the Local Government Boundary Commission for England. Section 63 provides that anything done by the Boundary Committee for England or by the Electoral Commission, in relation to structural or boundary changes or electoral arrangements, may be treated as having been done by the new Local Government Boundary Commission for England. Section 64 introduces Sch 3, which makes modifications to the Local Government Act 1992. Under the 2009 Act s 65, the process set out for the review by the Boundary Committee for England of the boundaries of local government areas is amended to enable the new Local Government Boundary Commission for England to consider whether consequential changes should be made to electoral arrangements as part of the same review. Provisions which relate to the defunct Local Government Commission for England are repealed by s 66. Section 67 gives effect to Sch 4, which contains amendments consequential on provision made in Pt 3 and gives the Secretary of State a power by order to amend, repeal or revoke enactments for the purposes of making further consequential provisions in relation to any provisions within Pt 3. Section 68 deals with interpretation.

Part 4 (s 69) Local authority economic assessments

Section 69 requires principal local authorities to prepare an assessment of the economic conditions of their area.

Part 5 (ss 70-87) Regional strategy

Section 70 provides for a regional strategy in each region other than London, which must set out policies in relation to sustainable economic growth, development and the use of land within the region and can include different policies for different areas within the region. By virtue of s 71, the participating authorities in each region, other than London, must make a scheme for the establishment and operation of a body known as a 'Leaders' Board'. Under s 72, the regional development agency and local authorities' Leaders' Board for the region, are, jointly, the 'responsible regional authorities' referred to in Pt 5, and if there is not a Leaders' Board the regional development agency will act alone. In accordance with s 73, the bodies responsible for regional strategy are required to exercise their functions with the objective of contributing to the achievement of sustainable development and having regard to the desirability of achieving good design. Section 74 gives the responsible regional authorities a duty to keep the regional strategy and relevant matters under review and explains when a draft revision is to be prepared either of part or the whole of the strategy. The responsible regional authorities are required by s 75 to prepare, publish and comply with a statement setting out their policies for involving interested persons when preparing a draft revision of a regional strategy. Section 76 provides for the responsible regional authorities to arrange for an examination in public into the draft revision to be held by a person appointed by the Secretary of State. The matters that the responsible regional authorities must take into account when preparing a revision are set out by s 77. Once the responsible regional authorities have prepared and published a draft revision of the regional strategy and the sustainability appraisal report, s 78 requires them to submit these to the Secretary of State, who can then choose either to approve the draft revision as it stands or to modify it before approving it. Section 79 sets out the Secretary of State's reserve

power to revise a regional strategy in whole or in part, where the responsible regional authorities fail to do so at the time specified in the regulations or directions. The Secretary of State's power to make regulations for procedural matters in connection with the revisions of regional strategies is set out by s 80. Section 81 imposes duties on the responsible regional authorities to implement and monitor the regional strategy. Under s 82, until a regional strategy is revised, the statutory development plan for an area will only consist of the policies that were previously in the regional spatial strategy. Section 83 requires regional development agencies to have regard to the regional strategy in exercising their functions. By virtue of s 84, the Secretary of State has the power to give guidance and directions in relation to the exercise of functions under Pt 5. Section 85, Sch 5 make consequential provision. Section 86 provides that regulations under Pt 5 are to be made by statutory instrument, and s 87 deals with interpretation.

Part 6 (ss 88-120) Economic prosperity boards and combined authorities

Section 88 provides that the Secretary of State can make an order establishing an Economic Prosperity Board ('EPB') for an area and specifies the conditions that need to be met for an area to be capable of designation as an EPB's area. Under s 89, the Secretary of State may by order make provision in relation to an EPB about the membership of the EPB, the voting powers of the members of the EPB, and the executive arrangements of the EPB. Section 90 sets out the provision which must be included in an order made under s 89 that deals with the number and appointment of members of an EPB. By virtue of s 91, the Secretary of State is allowed to make an order that provides for functions of a county council or district council to be exercisable by the EPB. The Secretary of State is allowed by s 92 to set out how the EPB will be funded. Under s 93, an EPB is required to keep a general fund whereby all receipts of the EPB must be carried to that fund and all liabilities falling to be discharged by the EPB must be discharged out of that fund. Section 94 provides that an existing EPB can pass a resolution to change its name. By virtue of s 95, the Secretary of State is allowed to make an order changing the boundary of an existing EPB's area. The Secretary of State is allowed to make an order to dissolve an EPB's area and abolish the EPB: s 96. Section 97 provides that any two or more of the specified authorities may review the effectiveness and efficiency of arrangements to promote economic development and regeneration within the geographical area covered by the review. Under s 98, if two or more of the councils that have conducted a review under s 97 conclude that the establishment of an EPB for an area would be likely to improve the exercise of statutory functions relating to economic development and regeneration and economic conditions within the area, then they have the power to prepare and publish a scheme for the establishment of an EPB for the area. In accordance with s 99, the Secretary of State may make an order establishing an EPB for an area if, having had regard to a scheme prepared and published under s 98, the Secretary of State considers that the establishment of an EPB for an area is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area. By virtue of s 100, one or more of the specified authorities is allowed to review an EPB matter. Section 101 provides that, if one or more of the authorities who have concluded a s 100 review conclude that the exercise of economic development and regeneration functions, or economic conditions, in an existing or proposed area of an EPB would be likely to be improved by the making of an order under any one or more of ss 89, 91, 92, 95 and 96, then those authorities have the power to prepare and publish a scheme proposing how this should be done. The requirements applying to the Secretary of State's power to make orders under ss 89, 91, 92, 95 and 96 in relation to an existing EPB are set out by s 102. By virtue of s 103, the Secretary of State can make an order establishing a combined authority for an area which meets certain conditions. The Secretary of State is allowed by s 104 to make an order about the constitutional arrangements and functions of an individual combined authority. By virtue of s 105, the Secretary of State may make in relation to a combined authority any provision that may be made in relation to an EPB under s 91. Section 106 allows the Secretary of State to make an order changing the

boundary of the area of an existing combined authority. The Secretary of State is allowed by s 107 to make an order to dissolve a combined authority's area and abolish its combined authority. Under s 108, any two or more of the specified authorities may review the effectiveness and efficiency of transport, and of the arrangements to promote economic development and regeneration, within the geographical area covered by the review. If two or more of the authorities who have conducted a s 108 review conclude that the establishment of a combined authority for an area would be likely to improve the exercise of statutory functions relating to transport and economic development and regeneration, the effectiveness and efficiency of transport in the area, and the economic conditions in the area, by virtue of s 109 the authorities may prepare and publish a scheme for the establishment of a combined authority for the scheme area. Section 110 specifies that the Secretary of State may make an order establishing a combined authority for an area if, having regard to the prepared and published scheme, the Secretary of State considers that the establishment of a combined authority is likely to improve the exercise of statutory functions relating to transport and the effectiveness and efficiency of transport in the area as well as the exercise of statutory economic development and regeneration functions in the area and the economic conditions in the area. Under s 111, one or more of the authorities specified is allowed to review a 'combined matter'. By virtue of s 112, authorities are able to prepare a scheme if one or more of the authorities who have conducted a s 111 review conclude that the exercise of statutory transport or economic development and regeneration functions, the effectiveness and efficiency of transport, or the economic conditions in an existing or proposed area of a combined authority would be likely to be improved by the making of an order under any one or more of ss 104-107. The requirements applying to the Secretary of State's power to make orders under ss 104-107 in relation to an existing combined authority are set out by s 113. Section 114 provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of an order made under Pt 6. Under s 115, the Secretary of State may make provision by order for the transfer of property, rights and liabilities for the purpose of, or in consequence of, an order under Pt 6. By virtue of s 116, the Secretary of State is allowed, by order, to make provision in consequence of any provision made by Pt 6. Section 117 sets out the procedure for making orders under Pt 6. Under s 118, the Secretary of State can issue guidance about anything which could be done under or by virtue of Pt 6 by a specified authority. Section 119 introduces Sch 6, which makes a number of amendments to apply provisions of local government and transport law to EPB's and combined authorities. Section 120 deals with interpretation.

Part 7 (ss 121-137) Multi-area agreements

Section 121 defines a multi-area agreement, and s 122 defines 'local authority' for the purpose of Pt 7. A list of public bodies and persons that will be 'partner authorities' for the purpose of a multi-area agreement are set out by s 123. By virtue of s 124, any group of two or more local authorities may approach the Secretary of State and request that the Secretary of State direct a multi-area agreement to be prepared for their area and submitted to the Secretary of State. Section 125 provides for the Secretary of State, in response to a request made under s 124, to direct the responsible authority to prepare and submit a draft multi-area agreement. Section 126 places certain duties on the responsible authority and other local and partner authorities where a direction has been issued under s 125, following a request under s 124. Provision is made by s 127 for the Secretary of State to approve, require modifications to or reject a draft multi-area agreement that is submitted in accordance with a direction issued under s 125. Section 128 provides for a multi-area agreement that is prepared through procedures other than following a direction from the Secretary of State under s125 to be submitted with a request that the Secretary of State approve it. Under s 129, the Secretary of State is able to approve a multi-area agreement submitted under s 128. A duty is placed by s 130 on all local and partner authorities for the area covered by a multi-area agreement approved by the Secretary of State under ss 127 or 129 to have regard, when exercising their functions, to each

improvement target in the agreement that relates to them. Section 131 defines who the responsible authority is and provides a mechanism for this to be changed by the local authorities to whom improvement targets in a multi-area agreement relate, with the agreement of the Secretary of State. A mechanism is provided by s 132 for a multi-area agreement that has been approved by the Secretary of State to be amended. Section 133 places equivalent duties on the responsible authority to consult and co-operate and have regard to guidance, and on other local and partner authorities to co-operate and have regard to guidance, when preparing a revision proposal as is placed on them when they are preparing a draft multi-area agreement by s 126. In accordance with s 134, the Secretary of State may approve or reject a revision proposal that is submitted by the responsible authority. A duty is placed on the responsible authority by s 135 to publish information about the multi-area agreement and any subsequent changes that are made to it through a revision proposal but leaves the decision as to what information is to be published and the manner of publication to the responsible authority. Under s 136, the Secretary of State is required to consult representatives of local government and, if appropriate, other people with an interest in multi-area agreements before issuing the guidance that responsible, local and partner authorities will have to have regard to in preparing agreements and revision proposals. Section 137 deals with interpretation.

Part 8 (ss 138-145) Construction contracts

Section 138 substitutes a new power allowing the Secretary of State and Welsh Ministers to disapply, by order, any or all of the provisions of the Housing Grants, Construction and Regeneration Act 1996 Pt 2 (ss 104-117) in relation to descriptions of construction contract specified in the relevant order. By virtue of the 2009 Act s 139, the original limitation of the 1996 Act Pt 2 to contracts which were in writing is removed, but it is prescribed that various matters must nonetheless be in writing. A provision to facilitate the correction of clerical or typographical errors in an adjudicator's decision is introduced by s 140. Section 141 provides that any contractual provision by the parties to a construction contract concerning the allocation between them of costs relating to an adjudication is ineffective unless certain conditions apply. Section 142 addresses the issue of making periodic payments under a construction contract conditional on obligations under another contract, and the issue of making the date a payment becomes due dependent on the giving of a notice by the payer of the sum the payer proposes to pay. Section 143 amends the original provisions of the 1996 Act relating to the notices which a payer gives of the sum which the payer proposes to pay and introduces provisions relating to the giving of notices by the payee. A statutory requirement to pay sums specified in such notices is introduced by the 2009 Act s 144. Section 145 amends the provisions relating to a contractor's right to stop working when the contractor has not been paid so as to put it beyond a doubt that a contractor may stop carrying out some, and not simply all, of the work in such a case.

Part 9 (ss 146-150) Final

Section 146 introduces Sch 7, which contains various repeals. Sections 147-150 deal with extent, commencement and the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Local Government Act 1972 ss 248, 249, Sch 28A; Housing Grants, Construction and Regeneration Act 1996 ss 106A, 107, 108, 108A, 110, 110A, 110B, 111, 112; Regional Development Agencies Act 1998 s 7; Local Government Act 2000 s 21ZA; Government of Wales Act 2006 Sch 5; Local Government and Public Involvement in Health Act 2007 ss 8, 10-12, 123; and Housing and Regeneration Act 2008 s 278A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/(1) DEVELOPMENT OF LOCAL GOVERNMENT/(i) Introduction/1. Introduction.

1. THE LEGISLATION, AREAS AND AUTHORITIES

(1) DEVELOPMENT OF LOCAL GOVERNMENT

(i) Introduction

1. Introduction.

Local government in England and Wales¹ consists of the administration by locally elected bodies of powers conferred and duties imposed by Parliament². The structure of the arrangements varies³. In many instances there are two tiers of principal authorities, whilst in others there is a single tier consisting of a unitary authority⁴. In addition, a system of elected parish or community councils exists in most rural and some urban parts⁵.

These locally elected bodies are constituted as corporations⁶, and as such are legally distinct entities from the inhabitants of the areas which they govern⁷. Local authorities, like the House of Commons⁸ and the European Parliament, are the subject of election by universal suffrage⁹. In general, they are responsible to their electorates; by enactment, they may also be made answerable to ministers and to each other¹⁰. As statutory corporations¹¹, they are subject to the ultra vires rule by which their powers to act are limited to those functions expressly conferred on them, or which are calculated to facilitate or are conducive or incidental to the discharge of those functions¹². There are certain respects, whether in relation to the interpretation of their statutory powers or duties¹³, or in relation to historic rights and privileges attaching to local authorities or their inhabitants¹⁴, in which the history and origins of local authorities may be significant¹⁵.

Local authorities are subject to the direction¹⁶, control¹⁷ and supervision¹⁸ of the executive, namely the Ministers of the Crown and the Welsh Ministers, to the extent that legislation for that direction, control and supervision has been made¹⁹. This is the position as a matter of law; in practice, the position of the government as a substantial contributor of finance²⁰ and as the repository of an armoury of confirming or consenting powers is one of dominant influence on all major policies²¹.

1 In the Local Government Act 1972, 'Wales' means the combined area of the preserved counties, and 'England' does not include any area which is included in any of the preserved counties: s 269 (substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 8). 'Preserved county' means any county created by the Local Government Act 1972 as a county in Wales, as it stood immediately before the passing of the Local Government (Wales) Act 1994 but subject to any provision of that Act, or any provision made under the Local Government Act 1972, redrawing its boundaries: s 270(1) (definition added by the Local Government (Wales) Act 1994 s 1(7)). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the power of the Secretary of State to cause referendums about the establishment of elected assemblies for the regions of England (except London) see the Regional Assemblies (Preparations) Act 2003; and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 547 et seq.

2 See eg the Local Government Act 1972 s 2 (England) and s 21 (Wales); and PARAS 24, 37.

Under the Local Government Act 1933 s 129(1) (repealed), the creation of boroughs under the royal prerogative had the effect of conferring on those boroughs the powers of that Act relating to boroughs. But to enable the royal prerogative to be so exercised there was a specific saving declaring that the statutory provisions as to charters were in addition to and not in derogation of the royal prerogative: see s 155 (repealed). The statutory powers for the exercise of the royal prerogative in the Local Government Act 1972 are limited to those matters in ss 245-247 as to status, power to appoint local officers of dignity, privileges or rights of citizens or burgesses of former cities or boroughs and as to armorial bearings: see PARA 107 et seq. Any enabling power conferred by the Local Government Act 1972 is in addition to, and not in derogation of, any prerogative powers: see s 271(4). The provisions for the conferment of functions and the imposition of duties on the new local authorities were enacted in the Local Government Act 1972 without any operation of the royal prerogative and are thus matters of statute. In accordance with the conventions of the constitution the royal prerogative in those matters dealt with by statute is abolished or merged and cannot be exercised: see *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 369, 853. As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 367 et seq.

3 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

4 This position is the result, principally, of the Local Government Act 1972, the Local Government Act 1985, the Local Government Act 1992 and the Local Government (Wales) Act 1994: see further PARA 5 et seq.

The Local Government Act 1972 provides for a two-tier system, the tiers being complementary and independent rather than 'upper' and 'lower'. Under the Local Government Act 1972 (as originally enacted), one tier consisted of county councils and the Greater London Council, and the other tier consisted of district councils and London borough councils: see PARA 5. The Local Government Act 1985 abolished the Greater London Council and the metropolitan county councils, leaving the functions previously exercised by those councils to be exercised (largely but not exclusively) by the London borough councils and the metropolitan district councils. Thus, in those areas local government operated through a single tier. See further PARA 17. Under the Local Government Act 1992 structural changes may be made so that other areas also have a single tier of local government and the Local Government and Public Involvement in Health Act 2007 further encouraged the trend towards unitary government (see generally Part 1 of that Act): see PARA 57. As to London government see PARA 35; and **LONDON GOVERNMENT**. In relation to Wales, the Local Government (Wales) Act 1994 created a single tier of county or county borough councils: see PARAS 18, 37 et seq. See further PARA 24 et seq.

5 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

6 See eg the Local Government Act 1972 s 2(3) (see PARA 24), s 14(2) (see PARA 33), s 21(2) (see PARA 37), s 33(1) (see PARA 45). Parish meetings and community meetings are not corporate bodies: see PARAS 34, 41.

7 As to a corporation being a distinct entity see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1113. Unlike their predecessors before the reorganisation of local government under the Local Government Act 1972, those authorities which have obtained or obtain the status of a borough by charter do not thereby or by the charter conferring that status obtain any additional administrative powers but are limited to their statutory powers conferred by Parliament: see PARA 25.

8 As to the House of Commons see **PARLIAMENT** vol 78 (2010) PARA 892 et seq. See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 As to elections of local authorities see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

10 See, for example, the responsibility of the Secretary of State (and, in Wales, the Welsh Ministers) for the handling and consideration of complaints about the discharge of social services functions by social services authorities: Local Authority Social Services Complaints (England) Regulations 2006, SI 2006/1681; Social Services Complaints Procedure (Wales) Regulations 2005, SI 2005/3366 (see **SOCIAL SERVICES AND COMMUNITY CARE**). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

11 See the text and note 2; and PARA 460.

12 As to the ultra vires rule see PARA 461.

13 Much of the law relating to local authorities depends for interpretation on decisions under the common law or under statutes now repealed. Many such decisions will still be relevant but have to be examined and valued in the light of the then current circumstances and framework of legislation. Permanence and continuity are elements which contribute to the relevance of historical matter in the work of interpreting the law of local

government: see eg *R v Bristol City Council, ex p Everett* [1999] 2 All ER 193, [1999] 1 WLR 1170, CA; *Birmingham City Council v Oakley* [2001] 1 AC 617, [2001] 1 All ER 385, HL.

14 Eg questions as the preservation of rights and privileges in boroughs: see PARA 109.

15 See PARA 2 et seq.

16 Directing powers are confined to specific subjects: see eg the Education Act 1996 s 497; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 58.

17 Powers of control include the requirement for the consent of the Secretary of State or the Welsh Ministers (see eg the Local Government Act 1972 s 123 (disposal of land); and PARA 515) or confirmation by him or them of various orders.

As to the confirmation of orders see also *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929 (compatibility with human rights legislation). Certain classes of byelaw are subject to confirmation by the Secretary of State or Welsh Ministers: see the Local Government Act 1972 s 236; and PARA 556.

18 Supervising powers include powers of audit (see the Audit Commission Act 1998; and PARA 744 et seq), and the holding of local inquiries (see the Local Government Act 1972 s 250; and PARA 105). See also the requirement for local financial returns (see s 168; and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 634) and the general power to require reports, returns and information (see s 230; and PARA 543).

19 See PARA 101. Ministers act in the name of the Crown under the royal prerogative by statute (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 366) or under their residual powers. For a discussion of the residual powers see *R (on the application of Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548.

20 Eg by grants: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 531 et seq.

21 In practice, much government policy is disseminated in departmental circulars and like publications. These may contain directions or consents authorised under specific powers. Except and in so far as these circulars have the force of law by reference to specific powers, they operate as guidance, advice and information but may nonetheless be influential.

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(ii) Early Legislation

2. Local government from its origins to 1834.

The development of local institutions of government can be traced back continuously to the shire, hundred, burgh, vill, tithing or township of the two centuries preceding the Norman conquest¹.

Considerable business was effected in shire moot, hundred moot or burgh moot, over which presided the king's shire reeve or, in the case of the towns, the king's port reeve². The Norman and Plantagenet kings built on these Saxon institutions by superimposing a strong central executive³. In the late twelfth century the concept of the European commune system of town government spread to London and other cities⁴, which secured charters from the king granting new rights and, in particular, the right to choose their own chief citizen, the mayor⁵. At this time the development of the system of king's justices in eyre travelling around the country to hold assizes enabled the king to develop a system of control of a local government which then, and for a long time to come, was primarily a system based on courts⁶. By the end of the fourteenth century the justices of the peace in the shires had acquired substantial administrative powers⁷. By the time of Richard II a new and very significant practice had developed by which the powers of justices of the peace were conferred by charters upon the cities and burghs⁸.

Meanwhile the parish, be it a township or rural village or an ecclesiastical division in a city or burgh, became a basic unit of local administration⁹.

Severe problems of unemployment and poverty culminated in the peasants' revolts of 1548-49¹⁰. Faced with a tide of distress which included a drift from the countryside, the cities became pioneers in poor law and developed their homes, schools, hospitals and workplaces¹¹. In 1597 and again in 1601 the central government codified the results of this experimentation and imposed on parishes responsibility for dealing with their poor¹². Thus by the first half of the seventeenth century there was in existence a pattern of county justices and borough administrations, with a sub-stratum of parishes, whose officers were the overseers of the poor¹³. The overseers were controlled in all important respects by the justices of the peace, whilst the justices of the peace were controlled by the judicial arm of the King's Privy Council, the Court of Star Chamber¹⁴.

In 1641 the Long Parliament abolished the Court of Star Chamber. Thenceforth for nearly 200 years, except for short and disastrous attempts by Charles II and James II to interfere with local government by dismissing justices of the peace and other officers and by abrogating charters and substituting new ones with royal control over all significant appointments, the local government system was administered by justices of the peace and parish vestries in the country areas and by increasingly ineffective and often corrupt corporations in the towns, but without any system of central control or supervision¹⁵. To meet the needs arising from the growth of towns and of an industrial population ad hoc improvement commissioners were established by local Acts of Parliament¹⁶. Between 1780 and 1829 serious violence in the streets of cities, and the failure of attempts to solve the problem by the use of the military¹⁷, resulted in a reforming tide which during the next 70 years gave rise to greater changes than in the previous 700¹⁸.

1 See Maitland *Constitutional History of England* (1908). Maitland describes how the kingdom was formed from its counties rather than the reverse. As to the development of local institutions of government see also Baker *An Introduction to English Legal History* (4th Edn, 2002).

2 See Whitelock *The Beginnings of English Society* (revised Edn, 1972).

3 The combined forces of administration produced the Domesday Survey. See also Sir Ivor Jennings *The Queen's Government* (1954).

4 This movement reflected a movement of power from the land-owning barons to the cities, and is thus a feature of the history of balancing of power in the constitution of the realm.

5 Kings in great need of money, eg Richard I and John, were eager to sell rights. London's mayoralty dates from 1194. A detailed account of these developments is contained in Shenton *English Society in the Early Middle Ages* (4th Edn, 1965) Ch IV.

6 See Plucknett *Concise History of the Common Law* (5th Edn, 1956).

7 The justices of the peace were originally 'one or two of the discreetest knights of the shire' assigned to keep the peace under the Statute of Westminster the Second (1285) c 30 (repealed). By 1347 they had begun to act judicially, and Edward III gave statutory recognition to this transformation by the Justices of the Peace Act 1361. At the same time and as a result of severe problems following the Black Death the Statute of Labourers 1361 (repealed) gave to the justices wage-regulating powers. See further 1 Holdsworth's *History of English Law* (7th Edn, 1956) pp 26-31. From this time forward for some 500 years the justices of the peace ruled over their counties.

8 See the Report of the Royal Commission on Municipal Corporations in England and Wales 1835 para 12. In many cases these charters contained a 'no interference' clause, thus excluding the jurisdiction of the county sheriff and county justices.

9 The parish as an ecclesiastical unit with recognised boundaries and an established taxation system for the upkeep of its church was the convenient means of basing civil responsibilities. For a full account of the development of the civil parish via the Anglo-Saxon township to the ecclesiastical parish see Redlich and Hirst *History of Local Government in England* (1958 Edn). See also **ECCELSIASTICAL LAW** vol 14 PARA 534 et seq.

- 10 For an account of this see Bindoff *Tudor England* (1950).
- 11 These early examples of municipal enterprise are described in Bindoff *Tudor England* (1950).
- 12 43 Eliz 1 c 2 (Poor Relief) (1601) (repealed) is commonly referred to as the start of rating, the poor law or local government. It was in fact a measure of consolidation. See also 39 Eliz 1 c 3 (Poor) (1597) (repealed).
- 13 The churchwardens were ex officio overseers under 43 Eliz 1 c 2 (Poor Relief) (1601) s 1 (repealed).
- 14 For an account of the work of the Court of Star Chamber see Plucknett *Concise History of the Common Law* (5th Edn, 1956).
- 15 Charles II and James II endeavoured by the process of quo warranto to substitute charters with royal control of appointment of borough officers for charters which had conferred election upon the boroughs. The abandonment of this policy by James II in October 1688 came too late. As to the succeeding lack of central control or supervision see Hood Phillips *Constitutional and Administrative Law* (5th Edn, 1973) p 454. As to the state of the boroughs and their corrupt practices see Sidney and Beatrice Webb *The Manor and the Borough*. See also the Report of the Royal Commission on Municipal Corporations in England and Wales 1835; and note 8.
- 16 See Redlich and Hirst *History of Local Government in England* (1958 Edn).
- 17 In the Gordon Riots in London in 1780, the Peterloo Riots in Manchester in 1819, and the Bristol Riots in 1819. It is not possible to understand the reforms of the 1830s except in the context of these events and the political thinking which stemmed from the conditions of the age, such as that of Tom Paine, William Cobbett and Jeremy Bentham.
- 18 The first major reform was Sir Robert Peel's Metropolitan Police Act 1829 establishing the London police force. Modern local government was mainly initiated between 1829 and 1899: see further PARA 3.

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3. Development of local government between 1834 and 1929.

Modern local government may be said to date from the Poor Law Amendment Act 1834, which retained the parish as the unit but formed new combinations called unions of parishes for poor law purposes or, more shortly, poor law unions¹. This Act was followed by the Municipal Corporations Act 1835, the importance of which lay in its establishment of municipal corporations, elected by all the ratepayers, whose exercise of functions of local government conferred on them by statute was regulated by Parliament². This Act further directed boroughs to set up watch committees and police forces³. Specific provision was made for the appointment of committees⁴.

The Public Health Act 1848 established local boards of health, but orders for this purpose were required to be preceded by a petition from ratepayers and by a public inquiry⁵. The Public Health Act 1872 established urban and rural sanitary districts throughout the country, and the Public Health Act 1875 consolidated, with amendments, the previous public health legislation and created urban or rural sanitary authorities on an elected basis for each sanitary district⁶. The Local Government Board was created as a central supervising body pursuant to the Local Government Board Act 1871⁷.

The Local Government Act 1888 set up county councils in which were vested the administrative business of the county justices in quarter sessions⁸ and important highway functions⁹. This Act established 61 cities and boroughs as independent county boroughs having powers equivalent to those of the county council, but in their case with the police function remaining vested in the watch committee¹⁰. The Local Government Act 1894 established parish meetings¹¹ and parish councils¹², and renamed the urban and rural sanitary authorities as urban district councils¹³ and

rural district councils¹⁴. In 1889 the London County Council was established¹⁵ and the London Government Act 1899 created 28 metropolitan borough councils in London¹⁶.

The Local Government Act 1929 transferred the functions of poor law authorities to county councils and county boroughs¹⁷, transferred all rural district highways to county councils¹⁸ and introduced a system of general exchequer contributions towards the expenses of county councils and county boroughs¹⁹. By this Act county councils were required to review the boundaries and constitution of their county districts and report proposed changes to the appropriate minister, who (subject to Parliamentary approval) could make orders to effect the changes²⁰.

1 Poor Law Amendment Act 1834 ss 37, 38 (repealed). The unions were administered by guardians elected by the ratepayers, the guardians being supervised by a central government board of Poor Law Commissioners.

2 The Municipal Corporations Act 1835 repealed and annulled so much of all laws, statutes and usages, and so much of all royal and other charters, grants and letters patent relating to specified boroughs, as were inconsistent with or contrary to the provisions of the Act: see s 1, Schs (A), (B) (repealed).

3 See the Municipal Corporations Act 1835 s 76 (repealed). Arising out of conditions of serious disorders, the County and Borough Police Act 1856 (repealed) provided for compulsory county police forces. The administrative authorities for this purpose were the county justices in quarter sessions, which were at that time the only administrative organisations on a county basis.

4 As to committees see the Municipal Corporations Act 1835 s 70 (repealed). Those committees were required to report their acts to the council for approval: see s 70 (repealed).

5 See the Public Health Act 1848 ss 8-10 (repealed). These local boards were elective and might be eg the council of a municipal borough. The General Board of Health was established by s 4 (repealed). This board failed and was replaced by the Local Government Board in 1871: see the text and note 7; and PARA 96 note 1. The Metropolitan Board of Works for London was created to provide and maintain main roads and main sewerage: see the Metropolis Management Act 1855; and **LONDON GOVERNMENT**. In 1856 county and borough police forces became compulsory (see the County and Borough Police Act 1856 (repealed); and note 3) and the Highway Act 1862 (repealed) empowered justices in quarter sessions to combine parishes into highway districts.

6 Prior to this legislation the sanitary districts had been administered by borough councils, improvement commissioners or local boards of health, the latter having been established by the central government rather than by the inhabitants in their localities. In addition therefore to establishing a uniform and compulsory system of elective authorities for sanitary functions, the Public Health Act 1875 made the provision of sewers and sewerage facilities an enforceable duty instead of a power: see ss 15-26 (repealed). For the present law on these matters see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 1 et seq.

7 See the Local Government Board Act 1871 s 2 (repealed); and PARA 96.

8 However, police functions were not so vested, but were referred to a standing joint committee of the county justices and the county council: Local Government Act 1888 s 30 (repealed).

9 See the Local Government Act 1888 ss 1, 3 (repealed).

10 See the Local Government Act 1888 s 31, Sch 3 (repealed). The county boroughs were all cities and boroughs with a population exceeding 50,000, plus certain cities of smaller population which in former ages had obtained charters as counties: see s 31 (repealed).

11 See the Local Government Act 1894 ss 1(1), 2(1) (repealed). These were for rural parishes: see s 1(1) (repealed).

12 See the Local Government Act 1894 s 1(1)(a) (repealed). These were set up for all large and some small parishes: see s 1(1)(a) (repealed).

13 See the Local Government Act 1894 s 21(1) (repealed). Urban district councils included non-county borough councils which continued to be included in the expression 'urban authority' in legislation up to 1933: see s 21(3) (repealed).

14 See the Local Government Act 1894 s 21(2) (repealed). The rural district councils were created guardians of the poor law unions for their areas: see s 24(3) (repealed).

- 15 lie under the Local Government Act 1888 ss 1, 40 (repealed), which provided that the metropolis should be an administrative county by the name of the Administrative County of London: see **LONDON GOVERNMENT**.
- 16 See the London Government Act 1899 ss 1, 4(1), Sch 1 (repealed); and **LONDON GOVERNMENT**.
- 17 See the Local Government Act 1929 ss 1, 113 (repealed). The poor law was abolished and replaced by provisions in the National Assistance Act 1948 (see **SOCIAL SERVICES AND COMMUNITY CARE**): see s 1 (amended by the Supplementary Benefit Act 1966 s 39(3), Sch 8).
- 18 See the Local Government Act 1929 s 30 (repealed). There were other changes in highway functions: see s 30(2), (3) (repealed).
- 19 See the Local Government Act 1929 s 86 (repealed).
- 20 See the Local Government Act 1929 ss 46, 47 (repealed). Large numbers of changes in county districts and their boundaries resulted from the orders following these reviews.

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4. The Local Government Act 1933.

The Local Government Act 1933 consolidated with some amendments all the previous legislation relating to the structure of local government in England and Wales outside London¹. It continued the system of administrative counties, county boroughs, non-county boroughs, urban districts and rural districts, in each case with a council to administer the functions vested in it by that Act or otherwise². It provided for the continuance of parish meetings in rural parishes³, and for the continuance of existing parish councils or, by order of the county council, the establishment of new parish councils⁴.

The Local Government Act 1933 contained numerous provisions relating to elections, members, meetings, committees, officers, offices, alteration of areas, acquisition of and dealing with land, expenses, borrowing, accounts and audit, byelaws, local bills of Parliament, freemen, contracts, legal proceedings, notices, documents and other administrative matters⁵. These provisions were replaced by those of the Local Government Act 1972, which established the major reorganisation of local government in 1972⁶.

The Local Government Act 1933 did not deal with particular functions of local authorities⁷ or with the provision of finance⁸.

1 The Local Government Act 1933 (repealed) was essentially an Act providing for the structure and the internal framework of management of local authorities. The Act was wholly repealed by the Local Government Act 1972 s 272(1), Sch 30. By virtue of s 273(1), that repeal operated on 1 April 1974 in respect of all provisions except certain matters where the repeal became operative at earlier dates specified in, and in accordance with, the Local Government Act 1972 (Commencement No 1) (England) Order 1973, SI 1973/373 (spent) and the Local Government Act 1972 (Commencement No 2) (Wales) Order 1973, SI 1973/375 (spent).

2 Counties were listed in the Local Government Act 1933 s 1(2), Sch 1 Pt I (repealed); county boroughs were listed in Sch 1 Pt II (repealed); and non-county boroughs were listed in Sch 1 Pt III (repealed). The urban districts (other than boroughs) and rural districts were those existing at the passing of the Act on 17 November 1933: see s 1(2)(d), (e) (repealed).

3 See the Local Government Act 1933 s 43(1) (repealed). Urban parishes ceased to exist as units of local government: see s 269(1) (repealed), by which all functions of vestries or parishes in boroughs or urban districts, except those relating to the affairs of the church or charities, were vested in the borough or urban district council.

4 See the Local Government Act 1933 s 43(2) (repealed).

5 Administrative functions of a general nature were dealt with in the Local Government Act 1933, but the main functions (eg education, housing, public health, highways, town planning, open spaces, rating, etc) were not included.

The provisions of the Local Government Act 1933 were in various respects the subject of amending legislation between 1933 and 1972. Most of the amendments were incorporated in the provisions of the Local Government Act 1972.

6 See PARA 5.

7 As to the general powers of local authorities see PARA 460 et seq; and as to specific functions see PARA 579 et seq.

8 As to local government finance see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

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(iii) Reorganisation under the Local Government Act 1972

A. REORGANISATION OF LOCAL GOVERNMENT

5. Reorganisation of the structure of local government.

A complete reorganisation of local government was enacted in the Local Government Act 1972, under which the old county councils, county borough councils, non-county borough councils, urban district councils, rural district councils and urban parish councils¹ were abolished on 1 April 1974². New areas and authorities were established³, namely: metropolitan county councils in England⁴, non-metropolitan county councils in England⁵ and Wales⁶, metropolitan district councils in England⁷, and non-metropolitan district councils in England⁸ and Wales⁹. The surviving local authorities were the Greater London Council¹⁰, the London borough councils¹¹, the Common Council of the City of London¹², the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple¹³, the Council of the Isles of Scilly¹⁴, and the councils of rural parishes in England¹⁵.

The Local Government Act 1972 contains provisions for transfer and transitional provisions¹⁶, and specific provision is made in relation to the boundaries of the new local government areas¹⁷.

Despite subsequent legislation effecting changes in local government¹⁸, the changes have proceeded on the base as given by the Local Government Act 1972, which continues to provide the framework for local government in England and Wales.

1 As to the structure of local government before the enactment of the Local Government Act 1972 see PARA 4.

2 Local Government Act 1972 s 1(10), (11) (England), s 20(6) (as originally enacted) (Wales). In England the old boroughs which had been included in rural districts continued to exist as parishes: see s 1(9). In Wales the parishes and their institutions (councils, parish meetings and representative bodies) ceased to exist as part of the reorganisation into communities: see s 20(6)(a)-(e) (as originally enacted). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

3 See the Local Government Act 1972 ss 1, 20 (as originally enacted). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

Unless otherwise provided (see in particular the Local Government Act 1972 ss 1(1), 20(1), 273 (s 20(1) as originally enacted)), the provisions relating to the new local government areas and the constitution of the new authorities came into force on the passing of the Act (ie 26 October 1972). See further s 273(1), (2); the Local Government Act 1972 (Commencement No 1) (England) Order 1973, SI 1973/373 (spent); and the Local Government Act 1972 (Commencement No 2) (Wales) Order 1973, SI 1973/375 (spent). The transition from the old to the new authorities between 26 October 1972 and 31 March 1974 was effected with the two authorities operating contemporaneously in the transitional period from the first elections of the new authorities, generally on 31 March 1974. As to the transitional provisions see PARA 7 et seq.

4 See the Local Government Act 1972 s 1(2), Sch 1 Pt I; and PARA 24. As to the subsequent abolition of the metropolitan county councils see the Local Government Act 1985 s 1; and PARAS 17, 24.

5 See the Local Government Act 1972 s 1(2), Sch 1 Pt II; and PARA 24.

6 See the Local Government Act 1972 s 20(2), Sch 4 Pt I (as originally enacted). As to the subsequent reorganisation of local government in Wales see further PARA 37.

7 See the Local Government Act 1972 s 1(3), Sch 1 Pt I; and PARA 24.

8 See the Local Government Act 1972 s 1(4), Sch 3 para 1; and the orders cited in PARA 24 note 5.

9 See the Local Government Act 1972 s 20(3), Sch 4 Pt II (as originally enacted). As to the subsequent reorganisation of local government in Wales see further PARA 37.

10 The abolition provisions related specifically to areas outside Greater London: see the Local Government Act 1972 s 1(10), (11). As to the subsequent abolition of the Greater London Council see PARAS 17, 35; and **LONDON GOVERNMENT**.

11 See note 10. See further PARA 35; and **LONDON GOVERNMENT**.

12 See note 10. See further PARA 35; and **LONDON GOVERNMENT**.

13 See note 10. See further PARA 35; and **LONDON GOVERNMENT**.

14 The abolition provisions related specifically to areas outside the Isles of Scilly: see the Local Government Act 1972 s 1(10). As to the Council of the Isles of Scilly see PARA 36.

15 See the Local Government Act 1972 s 1(6); and PARA 27.

16 See PARA 7 et seq. See also PARA 579 note 2.

17 See Local Government Act 1972 s 1(5), Sch 1 Pt III (England), s 20(5), Sch 4 Pt IV (as originally enacted) (Wales). See further PARA 54 et seq.

18 See PARA 17 et seq.

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6. Consequential and supplementary orders.

The reorganisation of local government on 1 April 1974 in the form of the abolition of all the main local authorities existing outside Greater London immediately before that date¹ necessarily involved a comprehensive transfer of properties, staff, finances and statutory powers to the new authorities². The extent and complexity of the transfers, particularly to ensure that those matters and the necessary staff should be vested in accordance with the new division of functions³, required that there be powers to reinforce the main enactments relating to them by consequential and supplementary provision⁴. Powers are accordingly given⁵ to the Secretary of State or the Welsh Ministers⁶ or any appropriate minister⁷ at any time by order⁸ to

make such incidental, consequential, transitional or supplementary provision as may appear to him to be necessary or proper for the general or any particular purposes of the Local Government Act 1972, or in consequence of any of its provisions, or for giving full effect to them⁹, or to be necessary or proper in consequence of such of those provisions of any other Act passed in the same session¹⁰ as apply to any area or authority affected by the Local Government Act 1972¹¹. Nothing in any other provision of the Local Government Act 1972 is to be construed as prejudicing the generality of these powers¹².

Any such order may, in particular, make provision:

- 1 (1) with respect to the transfer and management or custody of property (whether real or personal) and the transfer of rights and liabilities¹³;
- 2 (2) with respect to the membership of any body, so far as that membership consists of persons elected by, or appointed by or on the nomination of, any authority affected by the Local Government Act 1972 or any two or more bodies which include such an authority¹⁴;
- 3 (3) for applying, with or without modifications, or amending, repealing, or revoking, with or without savings, any provision of an Act passed or an instrument under an Act made before 1 April 1974 and for making savings or additional savings from the effect of any repeal made by the Local Government Act 1972¹⁵;
- 4 (4) for any consequential and transitional arrangements for the purposes or in consequence of orders for changes in local government boundaries, constitutions and electoral arrangements¹⁶;
- 5 (5) for dissolving any body corporate established by any Act passed or by any instrument under an Act made before 1 April 1974¹⁷;
- 6 (6) for treating anything duly done before 1 April 1974 by any authority in the exercise of functions which on and after that date became functions of some other authority as having, from that date, been duly done by that other authority, and for treating any instrument made before that date, if or so far as it was made in the exercise of those functions, as continuing in force on and after that date until varied or revoked in the exercise of those functions by that other authority¹⁸;
- 7 (7) for securing the continued discharge of functions in relation to the Confederation of the Cinque Ports and its courts¹⁹.

Numerous orders have been made under these powers²⁰.

1 See PARA 5.

2 See PARA 7 et seq.

3 See PARA 579 et seq.

4 These general terms are used in the heading of the Local Government Act 1972 s 254, whereas the operative terms in that provision add the words 'incidental and transitional'. Although a great part of many of the orders under these provisions were to effect the transition at 1 April 1974, there are also many matters of permanent or long term effect.

5 I.e. by the Local Government Act 1972 s 254: see the text and notes 8-20; and PARA 16. Section 68 (transitional agreements as to property and finance: see PARA 88) applies for the purposes of Pt I (ss 1-19), Pt II (ss 20-38), s 214(1)(b) (abolition of burial boards: see **CREMATION AND BURIAL**) and Pt XII (ss 245-274), as if any reference to an order under Pt IV (ss 53-78) included a reference to any provision of Pt I or Pt II or to s 214(1)(b) or to any provision of any instrument made under Pt I, Pt II or Pt XII: s 254(6).

6 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

7 'Appropriate minister', in relation to the making of an order or regulation or the giving of a direction with respect to any matter, means the minister in charge of any government department concerned with that matter; but the validity of any order, regulation or direction purporting to be made or given by any minister by

virtue of a power conferred on the appropriate minister by the Local Government Act 1972 is not affected by any question as to whether or not that minister was the appropriate minister for the purpose: s 270(1).

8 le by statutory instrument: see the Local Government Act 1972 s 266(1); and PARA 98. Orders extending the area for which any local statutory provision is in force are provisional only: s 254(8). 'Local statutory provision' means a provision of a local Act (including an Act confirming a provisional order) or a provision of a public general Act passed with respect only to the whole or part of an existing local government area or a provision of an instrument made under any such local or public general Act or of an instrument in the nature of a local enactment made under any other Act: s 270(1). 'Existing', in relation to a local government or other area or a local authority or other body (except in ss 1, 20: see PARAS 5, 37), means that area or body as it existed immediately before the passing of the Local Government Act 1972: s 270(1). As to the meaning of 'local government area' see PARA 22.

9 Local Government Act 1972 s 254(1)(a).

10 le the session of 1971-72.

11 Local Government Act 1972 s 254(1)(b).

12 Local Government Act 1972 s 254(1).

13 Local Government Act 1972 s 254(2)(a). Very considerable transfers of property, finances and liabilities were effected by the orders made pursuant to this provision: see Department of the Environment memorandum 'Local Government Reorganisation--Transfer of Property' (2nd Edn) (see PARA 8); and Welsh Office memorandum 'Local Government Reorganisation in Wales--Transfer of Property' (2nd Edn) (see PARA 9).

14 Local Government Act 1972 s 254(2)(b).

15 Local Government Act 1972 s 254(2)(c). Repeals are made under s 272(1), Sch 30.

16 Local Government Act 1972 s 254(2)(d). As to arrangements for the purposes or in consequence of orders for changes in local government see s 67; the Local Government Area Changes Regulations 1976, SI 1976/246 (amended by SI 1978/247; SI 1989/1968; SI 2005/617 and by virtue of the Health and Medicines Act 1988 s 12(1)).

17 Local Government Act 1972 s 254(2)(e), which is expressed to be without prejudice to s 254(2)(d) (see the text and note 16).

18 Local Government Act 1972 s 254(2)(h).

19 Local Government Act 1972 s 254(2)(i). See further PARA 114.

20 Some of the orders have been made under the combined powers of the Local Government Act 1972 s 254 and one or more other provisions of the Local Government Act 1972. In particular, matters relating to staff transfers may be made under various provisions: see s 255; and PARA 7.

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B. TRANSITIONAL PROVISIONS ON REORGANISATION

7. Transitional provisions.

The Local Government Act 1972 contained provisions to allow for preparations to be made for the reorganisation of local government, so that the new councils could operate from 1 April 1974¹. In particular, provision was made for the first elections².

Staff commissions were set up for England³ and for Wales⁴, and arrangements were made for staff transfers⁵ and continuity of employment⁶. Provision was also made for compensation for loss of office⁷ or early retirement⁸.

In the case of certain formal business in process at 1 April 1974, specific provision was made to enable byelaws, orders or instruments to be brought into effect⁹.

1 See the Local Government Act 1972 s 18, Sch 3 as originally enacted (England); the Local Government Act 1972 s 37, Sch 5 as originally enacted (Wales). As to the initial expenses of the new authorities see s 169 as originally enacted and prior to its repeal by the Statute Law (Repeals) Act 2004.

2 See the Local Government Act 1972 Schs 3, 5 (as originally enacted).

3 See the Local Government Act 1972 s 257 as originally enacted and prior to its repeal by the Statute Law (Repeals) Act 2004.

4 See the Local Government Act 1972 s 258 as originally enacted and prior to its repeal by the Statute Law (Repeals) Act 2004.

5 See the Local Government Act 1972 s 255 (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 56); the Local Government (Registration Service) Order 1973, SI 1973/1654; the Local Government (Staff Transfer Schemes) Order 1973, SI 1973/1847 (amended by SI 1974/147); the Local Authorities Associations (Staff Transfer etc) Regulations 1974, SI 1974/461; the Local Authorities etc (Staff Transfer and Protection) Order 1974, SI 1974/483 (amended by SI 1974/595; SI 1974/1351; SI 1974/2044; SI 1975/944; SI 1976/315); the Magistrates' Courts (Transfer of Staff) Order 1974, SI 1974/499; the Transfer of Police Civilian Staff and Probation Staff Order 1974, SI 1974/533 (amended by the Criminal Justice Act 1982 s 65(1)); the Transfer of Police Officers Order 1974, SI 1974/551; the Local Authorities etc (Miscellaneous Provision) (No 3) Order 1975, SI 1975/1636; the Local Government Area Changes Regulations 1976, SI 1976/246 (amended by SI 1978/247; SI 1989/1968; SI 2002/2469; SI 2005/617; and by virtue of the Health and Medicines Act 1988 s 12(1)); and the Local Authorities etc (Miscellaneous Provisions) Order 1976, SI 1976/315 (amended by SI 1977/293; and the Local Authorities (Restoration of Works Powers) Act 1977 s 1(2)(c)).

6 See the Local Government Act 1972 s 256. As to remuneration see s 261 (amended by the National Health Reorganisation Act 1973 s 57, Sch 4 para 152; and the Health Authorities Act 1995 s 2(1), Sch 1 para 97(3) prior to its repeal by the Statute Law (Repeals) Act 2004).

7 See the Local Government Act 1972 s 259 (amended by the Local Government Act 1974 s 39; the Food Act 1984 s 134, Sch 10 para 23; and the Food Safety Act 1990 s 59(1), Sch 3 para 17); the Local Government (Compensation) Regulations 1974, SI 1974/463 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)); the Fire Services (Compensation) Regulations 1974, SI 1974/540 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)); the Police (Compensation) Regulations 1974, SI 1974/759; and the Coroners (Compensation) Regulations 1975, SI 1975/353 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)).

8 See the Local Government Act 1972 s 260; the Local Government (Retirement of Chief Officers) Regulations 1973, SI 1973/1260; the Police (Retirement of Senior Officers) Regulations 1973, SI 1973/1944 (amended by SI 1973/2024); the Fire Services (Retirement of Senior Officers) Regulations 1973, SI 1973/1951 (amended by SI 1973/2023); and the Water Authorities (Retirement of Chief Officers) Regulations 1974, SI 1974/73 (amended by SI 1989/1161; and the Environment Act 1995 s 120(1), Sch 22 para 233(1)).

9 See the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482.

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8. Principles of transfer in England.

All property¹ and liabilities² of the local authorities which were abolished by the Local Government Act 1972³ were transferred by order⁴ or by mutual agreement and specified in or authorised by such an order⁵ to an appropriate new local authority on 1 April 1974⁶.

Two principles governed the transfer of property and liabilities. The first was that property with liabilities specifically relating to it⁷ held by a local authority for the purposes of a particular

function⁸ immediately before 1 April 1974 (whether that property was within or outside the area of that authority⁹) was transferred to the new authority which from that date became responsible for that function and whose area included the area of that former authority¹⁰. The second principle, applying to all property not transferred in accordance with the first principle, was that for each former authority there would be a general legatee authority¹¹, namely in the case of a former county council the new county council for the same area, and in the case of a former county borough or county district council the new district council for the same area¹².

The property transferred to the general legatee authority included property held for general purposes¹³ and property held for a function to be exercised concurrently¹⁴. Special provision was made to identify the legatee authority in those cases where the area of a former authority was split by the reorganisation among two or more successor authorities¹⁵. The transfer of property in accordance with the principles here outlined did not by itself affect the continuance of a user of that property, so that if the property was (other than for a temporary use) used wholly or partly for the purposes of a function exercised by an authority other than the new owner, that user was preserved as a right for that other authority on reasonable terms¹⁶. Special arbitration provision was made to resolve disputes with regard to the transfer of property¹⁷.

1 'Property' is not defined, nor is it limited in any way in the Local Government Act 1972 s 254(2)(a), which authorised the Secretary of State to provide by order for the transfer and management or custody of property (whether real or personal) and the transfer of rights and liabilities: see PARA 6. As to the Secretary of State see PARA 96. The substantive order that was made, namely the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861 (see note 4), makes specific provision for all aspects of property and all aspects of transfer.

2 'Liabilities' is not defined, nor is it limited: see note 1.

3 See PARA 5.

4 By order of the Secretary of State made under the Local Government Act 1972 s 254(1): see PARA 6. Such orders were made by statutory instrument: see s 266(1); and PARA 98. As to the orders made see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861 (amended or extended by SI 1974/406; SI 1974/595; SI 1974/968; SI 1974/1351; SI 1974/2044; SI 1975/244; SI 1975/1636; SI 1976/315; SI 1977/293; SI 1978/440; SI 1979/1123).

5 Transfers of particular land and buildings in respect of which authorities reached agreement were effected by the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 7, Sch 1 (amended by SI 1974/406; SI 1974/595). The new local authorities were authorised to enter into agreements as to transfer of property other than land, but these agreements were not the subject of scheduling in orders: see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 12 (amended by SI 1974/406).

6 As to the appropriate new local authority see the text and notes 7-12.

7 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 18(1), (2). In addition, where parts of land are, in consequence of a property transfer order, vested in two different authorities and any easement or other right over one part is required to enable the other part to be used, provision is made for the claiming of those easements or rights and for the settlement of disputes with respect to them: see the Local Authorities etc (England) (Property etc: Further Provision) Order 1974, SI 1974/406, art 8.

8 The former authority was responsible for deciding the issue of fact as to functional use of a property, subject to the disputes procedure (see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 10(2)), but in *Sheffield Area Health Authority v Sheffield City Council* [1983] 2 All ER 384 it was held that the question whether property was held or used by a local authority for one of its health functions before 1 April 1974 could be determined by a local authority which only came into existence on that date.

9 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 10(4)(b).

10 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 9, Sch 2 (amended by SI 1974/406; SI 1974/1351; SI 1997/2971); and the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 16, Sch 4 (amended by SI 1974/406; SI 1974/595; SI 1974/1351; SI 1997/2971). Where land was used for more than one function it was deemed to be held for the purpose of that function for which the land was used to the greatest extent: see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 19.

11 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, Schs 2, 4 (both as amended: see note 10).

12 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, Schs 2, 4 (both as amended: see note 10). Provision was also made to transfer property of a divided parish to the appropriate new parish, and to transfer property used for functions exercisable by parish councils alone to the successor parish councils in the area of former boroughs and urban districts. As to successor parish councils see PARA 27. In the cases of former cities and boroughs in which charter trustees were established (see PARA 113), the historic and ceremonial property other than land and buildings, and in particular the charters, insignia and plate of the former city or borough, was transferred to the charter trustees: see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 7, Sch 1 (amended by SI 1974/406; SI 1974/595). In the case of former boroughs, the local authority to which the charters or insignia of the borough are transferred must, if practicable, preserve them in the area of the former borough: Local Government Act 1972 s 254(7).

13 Eg town halls and general council offices. Property held for general purposes which was immediately before 1 April 1974 used wholly or mainly for the purposes of a particular function (or for two functions together) was deemed to be held, and was therefore to be transferred accordingly, for the function or functions for which it was so used: see the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 20. Article 25 provided that corporate land not transferred as held for a specific statutory function should be held by the appropriate transferee authority as land held for the benefit, improvement or development of its area under the Local Government Act 1972 s 120(1)(b) (see PARA 509) or s 124(1)(b) (see PARA 516) (thus in effect abolishing corporate land).

14 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 19(2).

15 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, Sch 2 (as amended: see note 10).

16 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 23 (amended by SI 1974/406; SI 1975/244).

17 See the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, art 39 (amended by SI 1974/406; SI 1975/244; SI 1976/315).

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9. Principles of transfer in Wales.

The arrangements for the transfer of property from the former authorities to the new authorities in Wales on 1 April 1974 were identical to those already discussed in the context of reorganisation in England¹, subject, however, to the difference that in Wales all parishes and parish councils were abolished as part of the reorganisation into communities and community councils². Thus the transitional provision for transferring property in Wales³, in addition to making similar arrangements for transfer of county council, county borough and county district property, also provided for the transfer of property from the former parish councils to their successor community councils⁴.

1 See PARA 8. As to the subsequent changes in Wales see PARAS 18, 37 et seq.

2 See PARAS 5, 41 et seq.

3 See the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863 (amended and extended by SI 1974/404; SI 1974/595; SI 1974/1351; SI 1974/2044; SI 1975/244; SI 1975/1636; SI 1976/315; SI 1977/293; SI 1978/440). The transfer of property by specified classes was effected by the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863, art 9, Sch 2 (amended by SI 1974/404; SI 1997/2971); and the transfer to residuary legatee authorities was made by the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863, art 16, Sch 4 (amended by the Criminal Justice Act 1982 s 65(1); and SI 1974/404).

4 See the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863, Sch 2 Table item 10, Sch 4 Pt II (amended by the Criminal Justice Act 1982 s 65(1); SI 1974/406; SI 1974/595; SI 1974/1351; 1997/2971). In the cases of former cities or boroughs in which charter trustees were established (see PARA 113), the historic and ceremonial property other than land and buildings, and in particular the charters, insignia and plate of the former city or borough, was transferred to the charter trustees: see the Local Authorities (Wales) (Property etc) Order 1973, SI 1973/1863, art 7, Sch 1 (amended by SI 1974/406; SI 1974/595).

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10. Joint boards and joint committees.

Before reorganisation certain functions of local authorities were the subject of joint arrangements by means of joint boards or joint committees¹. In the case of any joint board existing at 31 March 1974², every constituent member of which was then a local authority³, which was constituted by or under any enactment for exercising functions for a united district or other area, not being a port health district⁴, then, notwithstanding the change of areas and authorities effected by the reorganisation of local authorities⁵, that board continued to exist on and after 1 April 1974 and to exercise for that area the same functions as before that date, to the exclusion of new local authorities⁶.

However, such continuance of joint boards did not take effect in those cases in which the joint board was constituted for an area which on 1 April 1974 became wholly within the area of a single new local authority⁷ if the board was constituted for the purpose of exercising functions which on and after that date would (apart from the existence of the board) be exercisable by that local authority⁸.

Joint committees existing at 31 March 1974 for the purpose of exercising functions for an area which on 1 April 1974 was to be within the areas of two or more new local authorities by which those functions would, apart from these provisions, become exercisable were continued in existence after 1 April 1974⁹, notwithstanding the changes of areas and authorities, as if such committees had been appointed¹⁰ by the new authorities¹¹. Such a joint committee continued to exercise the functions for which it was created for the area for which it exercised them before 1 April 1974, subject, however, to the power of the new authorities to make different arrangements for the discharge of those functions¹².

The provisions as to the continuance of joint boards and committees and their areas are without prejudice to the powers conferred by any enactment to amend or revoke the order constituting the body or area in question¹³, and are subject to any provision to the contrary made by, or by an instrument made under, the Local Government Act 1972¹⁴.

1 A general power to appoint joint committees was contained in the Local Government Act 1933 s 91 (repealed), but those committees could not levy, or issue or precept for, a rate or borrow money; nor were those committees corporate bodies with a separate legal existence. Powers, by order or provisional order, to establish joint boards were contained in a number of general Acts and in local Acts and any such order might apply, subject to necessary modifications, any provisions of the Local Government Act 1933: s 293(1) (repealed). As to the power of local authorities to establish joint committees under the Local Government Act 1972 see s 102; and PARAS 371, 380. There is no general power to establish joint boards, which are the subject of special authorisation according to the legislation for the particular function concerned.

2 ie existing before the passing of the Local Government Act 1972. As to the meaning of 'existing' see PARA 6 note 8.

3 As to the meaning of 'local authority' generally see PARA 23.

4 Special provision was made in respect of port health districts: see the Local Government Act 1972 s 263(3), (4), (7), (8)(c). As to port health districts see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

5 le by the Local Authorities (England) (Property etc) Order 1973, SI 1973/1861, Pt I (ss 1-19) and Pt II (ss 20-38) (as originally enacted).

6 Local Government Act 1972 s 263(1). This provision did not apply to any area wholly situated in Greater London or to a joint board for such an area, nor did it apply to a joint planning board for a national park: s 263(7).

As to the appointment and retirement of members, and as to expenditure where part only of the area of a constituent council is in the joint board area, see the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 20.

7 'New', in relation to any area or authority, means an area established by or under the Local Government Act 1972 including one established by virtue of any provision of the Local Government (Wales) Act 1994: Local Government Act 1972 s 270(1) (definition amended by the Local Government (Wales) Act 1994 Sch 15 para 57). As to the meaning of 'local authority' see PARA 23.

8 See the Local Government Act 1972 s 263(2). Accordingly, in any such case, the functions of the board became on 1 April 1974 functions of the new local authority (s 263(2)(a)), and the joint board ceased to exist (s 263(2)(b)). The staff and property of the joint board were transferred to the new local authority by virtue of the transfers of staff and property orders discussed in PARA 7. Section 263(2) did not apply to any area wholly situated in Greater London or to a joint board for such an area, nor did it apply to a joint planning board for a national park: s 263(7).

References to a former joint board in local statutory provisions to which s 262 applies (see PARA 14) must be construed as references to the local authority by which the board's functions have become exercisable (see s 263(8)(a)), and references to the united district or other area of a former joint board must be construed as references to so much of the area of the new local authority as corresponds to that united district or area (see s 263(8)(b)).

9 Local Government Act 1972 s 263(5).

10 le under the Local Government Act 1972 Pt VI (ss 101-109): see PARA 369 et seq.

11 Local Government Act 1972 s 263(5). A joint committee existing at 31 March 1974 the functions of which were to be exercisable by a single new local authority ceased to exist on 1 April 1974: see s 263(2); and the text and note 8.

12 Local Government Act 1972 s 263(5).

13 Local Government Act 1972 s 263(6). These powers include the power under s 254 to make provision with respect to any such body: see PARA 6.

14 Local Government Act 1972 s 263(9). For specific provisions to the contrary in the case of certain committees and boards see the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, arts 17, 19.

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11. Transfer of powers of certain public bodies.

Any functions of any of certain types of public body¹ may with the approval of the body concerned be transferred by an order of the Secretary of State or the Welsh Ministers² to any local authority³ the area of which comprises the district of that body, or jointly to two or more local authorities the areas of which together comprise that district⁴.

1. In any trustees, commissioners or other persons who, for public purposes and not for their own profit, act under any enactment or instrument for the improvement of any place, or for providing or maintaining a cemetery or market in any place: Local Government Act 1972 s 253(2). 'Public body' includes a local authority and a joint board or joint committee on which a local authority or parish meeting is represented; any trustees, commissioners or other persons who, for public purposes and not for their own profit, act under any enactment or instrument for the improvement of any place, for the supply of water to any place, or for providing or maintaining a cemetery or market in any place; and any other authority having powers of levying or issuing a precept for any rate for public purposes; and 'district' means, in relation to a public body other than a local authority, the area for which the public body acts: s 270(1).

2. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3. For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 s 253(4). As to the meaning of 'local authority' generally see PARA 23.

4. Local Government Act 1972 s 253(1). At the date at which this volume states the law no order had been made under s 253.

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C. ADAPTATION AND CONTINUANCE OF ENACTMENTS

12. General adaptation of enactments and instruments.

A number of general adaptations of enactments¹ passed before or during the same session as the Local Government Act 1972, and of instruments made before that Act under any enactment, were made by the Local Government Act 1972². In particular, references in any such enactment or instrument to a local authority within the meaning of the Local Government Act 1933 must be construed as a reference to a local authority within the meaning of the Local Government Act 1972³. Any reference to a specified officer of a local authority must be construed as a reference to the proper officer of a local authority⁴. Any reference to a representative body of a parish must, as respects England, be construed as a reference to the parish trustees of the parish⁵ and must, as respects Wales, be disregarded⁶. Provision is also made for the construction of references in earlier legislation to authorities by whom functions are to be exercised⁷.

Any reference in any enactment passed before 22 March 1967 to a parish must be construed in the case of former urban parishes⁸ as a reference to the area of each such parish⁹, and as respects Wales must be construed as a reference to a community¹⁰. Any reference to a rural parish in such an enactment must, as respects certain areas which at 1 April 1974 ceased to be parts of any parish¹¹, be construed as a reference to each such area¹². As respects Greater London¹³, any reference to a parish or urban parish in any such enactment relating to rating and valuation must be construed as a reference to a rating district¹⁴, and in any other such enactment must be construed as a reference to a rating area¹⁵.

The Local Government Act 1972 repealed a large number of enactments, including, in addition to many which were obsolete and unnecessary, the whole of the Local Government Act 1933 so far as it was unrepealed¹⁶. Where the Local Government Act 1972 repeals any enactment making provision with respect to a particular matter or particular matters and either makes or applies some other enactment making corresponding or different provision with respect to that matter or those matters, then, unless the contrary intention appears, references in any enactment other than the Local Government Act 1972, or in any instrument made under any enactment other than that Act, to the repealed enactment must be construed as references to

the enactment contained in or applied by the Local Government Act 1972 which makes the corresponding or different provision¹⁷.

1 'Enactment' is not defined in the Local Government Act 1972. Whilst all statutes are properly referred to as enactments, the word may be used to describe a particular provision in a statute: see *Wakefield and District Light Rlys Co v Wakefield Corpn* [1906] 2 KB 140 at 145-146 per Ridley J. However, 'enactment' may include not only statutes but also statutory regulations: see *Rathbone v Bundock* [1962] 2 QB 260 at 273, [1962] 2 All ER 257 at 259, DC, per Ashworth J. See also **STATUTES** vol 44(1) (Reissue) PARA 1232. It is to be noted that, whilst the Local Government Act 1972 s 251, Sch 29 paras 1-5 refer to references in enactments and instruments, Sch 29 para 6 refers only to references in enactments passed before a certain date.

In the Local Government Act 1972, except where the context otherwise requires, references to any enactment are to be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in that Act: s 270(5).

2 See the Local Government Act 1972 Sch 29 para 1(1). The provisions of Sch 29 paras 1-6 have effect subject to any provision to the contrary made by, or by any instrument made under, the Local Government Act 1972: Sch 29 para 8.

3 Local Government Act 1972 Sch 29 para 1(2). As to the meaning of 'local authority' in the Local Government Act 1972 see PARA 23. Any reference to a district which is such a reference by virtue only of a provision of the Local Government Act 1972 must be construed as a reference to a district within the meaning of that Act: see Sch 29 para 2. As to the meaning of 'district' in the Local Government Act 1972 see PARA 24 note 5.

References to expenses, including expenses of a specified description, incurred for general county purposes or to expenditure on which the whole of the county is chargeable must be construed as references to general expenses of a county council: see Sch 29 para 3(a). Any reference to expenses, including expenses of a specified description, incurred for special county purposes or to expenditure on which a part only of the county is chargeable must be construed as a reference to special expenses of a county council: see Sch 29 para 3(b). References to receipts of a county council for general or special county purposes must be construed as references to receipts of a county council in respect of general or, as the case may be, special expenses: see Sch 29 para 3(c). As to local government finance see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

4 See the Local Government Act 1972 Sch 29 para 4. As to proper officers see PARA 431.

5 Local Government Act 1972 Sch 29 para 5(a). As to parish trustees see PARA 34.

6 Local Government Act 1972 Sch 29 para 5(b). As to the abolition of parishes in Wales, and the establishment of a system of communities, see PARAS 5, 41.

7 See the Local Government Act 1972 s 179; and PARA 579 note 2.

8 Ie those areas in England outside Greater London which immediately before 1 April 1974 constituted urban parishes other than urban parishes in a rural district: see the Local Government Act 1972 Sch 29 para 6(2)(a). Where the area is divided between more than one district, the reference to a parish must be construed as a reference to each part of the area so divided: see Sch 29 para 6(2)(a).

9 See the Local Government Act 1972 Sch 29 para 6(1), (2)(a), (3). In the case of certain areas which at 1 April 1974 ceased to be parts of any parish (ie the areas mentioned in Sch 1 Pt IV para 3), any reference to a parish must be construed as a reference to each such area: see Sch 29 para 6(1), (2)(b). Where the area is divided between more than one district, the reference to an urban parish must be construed as a reference to each part of the area so divided: see Sch 29 para 6(3).

10 See the Local Government Act 1972 Sch 29 para 6(1), (5).

11 Ie the areas mentioned in the Local Government Act 1972 Sch 1 Pt IV para 3.

12 See the Local Government Act 1972 Sch 29 para 6(1), (4).

13 As to local government in London generally see PARA 35; and **LONDON GOVERNMENT**.

14 See the Local Government Act 1972 Sch 29 para 6(6)(a). As to rating generally see **RATING AND COUNCIL TAX**.

15 See the Local Government Act 1972 Sch 29 para 6(6)(b).

16 See the Local Government Act 1972 s 272(1), Sch 30.

17 See the Local Government Act 1972 s 272(2).

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13. Power to adapt Acts and instruments.

Power is given by Order in Council¹ coming into force not earlier than 1 April 1974, in any case where it appears to Her Majesty appropriate in consequence of the provisions of the Local Government Act 1972, to make modifications of any enactment contained in any other public general Act passed before that date or in any instrument made before that date under any such Act, being an instrument of a legislative character and not being an instrument in the nature of a local enactment². The modifications so authorised are limited to those appearing to Her Majesty to be necessary to make the enactment or instrument apply in relation to any particular class of new authority³ as it applies in relation to any particular class of local authority existing immediately before that date⁴.

1 Any power under the Local Government Act 1972 to make an Order in Council includes power to make an order varying or revoking any order previously made under the power: see s 266(2); and PARA 98.

2 See the Local Government Act 1972 s 252(1). At the date at which this volume states the law no such Order in Council had been made. As to the continuance and application with modifications of local enactments and instruments see PARA 14.

3 As to the meaning of 'new' see PARA 10 note 7.

4 See the Local Government Act 1972 s 252(1). The modifications which may be made under s 252 are in addition to those made by any other provision of the Act, but have effect subject to any such other modification except those made under s 179 (see PARA 579) in relation to the transfer of functions: see s 252(2).

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14. Continuance and adaptation of local statutory provisions.

Certain local statutory provisions¹ continue to apply on and after 1 April 1974, notwithstanding the changes of administrative areas and local authorities effected by or under the Local Government Act 1972, but they only apply to the area, things or persons to which or to whom they applied before that date². They have effect subject to any necessary modifications and to the specific modifications set out below³. In the case of instruments made under any repealed enactment, the instruments continue to apply notwithstanding that repeal⁴.

Specific modifications⁵ of the continued local statutory provisions are as follows:

- 8 (1) a local statutory provision which relates to functions exercisable by a local authority⁶ of any description by virtue of any public general enactment has effect as if for any reference to the authority by which the functions were exercised

- immediately before 1 April 1974, or to its area, there were substituted a reference to the authority by which those functions are exercisable on and after that date, or, as the case may be, to so much of the area of the latter authority as comprises the area of the former authority or any part of it⁷;
- 9 (2) a local statutory provision (not falling within head (1) above) has effect: (a) as if for any reference to an existing⁸ county or its council there is substituted a reference to so much of the new county⁹ or counties as comprise the area of the existing county or any part of it or, as the case may be, the council of that new county or the councils of those new counties¹⁰; and (b) as if for any reference to an existing county borough or county district or the council of either there is substituted a reference to so much of the new district¹¹ or districts as comprises the area of the existing borough or district or any part of it, or, as the case may be, the council of that new district or the councils of those new districts¹²;
- 10 (3) a local statutory provision (not falling within head (1) above) having effect in an area in Wales has effect: (a) as if for any reference to a rural parish there is substituted a reference to the corresponding community¹³; (b) as if for any reference to the council of any such parish which had a council, whether separate or common, there is substituted a reference to the council of the corresponding community¹⁴; and (c) as if for any reference to the parish meeting of any such parish which has no council there is substituted a reference to the council of the new district which comprises the corresponding community¹⁵;
- 11 (4) any reference in a local statutory provision to a specified officer of a specified county council, county borough or county district which ceased to exist is to be construed as a reference to the proper officer of the successor council¹⁶, and any reference to a specified officer of a rural parish which ceased to exist is to be construed as a reference to the proper officer of the council of the parish or community in which the area is comprised¹⁷.

Where any local statutory provision is continued in force in any area under these provisions, or is amended or modified in its application to any area by an order of the Secretary of State or any appropriate minister¹⁸, the Secretary of State or appropriate minister may by order:

- 12 (i) extend the provision throughout the new local government area¹⁹ in which it is continued in force²⁰;
- 13 (ii) provide that the provision as so continued, amended, modified or extended is to have effect in that area to the exclusion of any enactment for corresponding purposes (including any enactment contained in or applied by the Local Government Act 1972)²¹;
- 14 (iii) make such modifications, in its application to that area, of any enactment for corresponding purposes as will secure that the enactment will operate harmoniously with the provision in that area²²;
- 15 (iv) repeal or revoke any local statutory provision as spent, obsolete and unnecessary or as substantially superseded²³;
- 16 (v) transfer to any authority appearing to the Secretary of State or Welsh Ministers or the appropriate minister to be appropriate any functions²⁴ of an existing local authority²⁵;
- 17 (vi) without prejudice to head (v) above, make such modifications of any local statutory provision in its application to any new local government area as appears to the Secretary of State or the appropriate minister to be expedient²⁶.

Where, by or under the Local Government Act 1972, a provision of an enactment or instrument has been repealed or revoked in respect of any area²⁷ and a corresponding provision has been applied to that area, or any part of it²⁸, any reference in a local Act²⁹ or instrument made under

any Act to the repealed or revoked provision is to be construed as a reference to the corresponding provision³⁰.

Under the Local Government Act 1972, certain local statutory provisions³¹ ceased to have effect³², and certain descriptions³³ of local statutory provisions were only continued in force until the end of 1979 in metropolitan counties and the end of 1984 elsewhere³⁴.

1 As to the meaning of 'local statutory provision' see PARA 6 note 8. The local statutory provisions to which the Local Government Act 1972 s 262 applies are those in force immediately before 1 April 1974 and not expressly repealed or revoked by the Local Government Act 1972, which were in force wholly outside Greater London (except in the Isles of Scilly) and so much of any local statutory provision which was in force partly in Greater London as was in force outside Greater London: see s 262(12). Section 262(1) applies to local statutory provisions which are not continued by any other provision of the Act: see s 262(1). As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36.

2 See the Local Government Act 1972 s 262(1)(a). See also note 3.

3 See the Local Government Act 1972 s 262(1)(b). Section 262(1) has effect subject to the provisions of: (1) the Local Government Act 1972, other than s 251, Sch 29 Pt I (see PARA 12); (2) any Act passed after the Local Government Act 1972 (ie after 26 October 1972) and before 1 April 1974; and (3) any order made under s 254 (see PARA 6) or s 262(3)-(13): see s 262(2).

4 See the Local Government Act 1972 s 262(1)(a). The continuance of an instrument by s 262(1)(a) is not to be construed as prejudicing any power to vary or revoke the instrument which is exercisable apart from s 262(1): see s 262(1). As to the enforcement, amendment or revocation of these instruments notwithstanding the repeal of the enactment under which the instrument was made see also the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 6.

5 The specific modifications in the Local Government Act 1972 s 262(3)-(5) (see the text and notes 6-15) are subject to any provision to the contrary made by, or by any instrument made under, the Local Government Act 1972: see s 262(6). Further, the Secretary of State or Welsh Ministers may provide by order for the exercise of functions conferred by any local statutory provision to which s 262 applies, and may exclude the operation of those specific modifications which would otherwise conflict with the order: see s 262(6). These orders, being local in nature, are not noted in this work. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 As to the meaning of 'local authority' see PARA 23.

7 See the Local Government Act 1972 s 262(3). As to the construction of references to joint boards or united districts see s 263(8)(a), (b); and PARA 10.

8 As to the meaning of 'existing' see PARA 6 note 8.

9 As to the meaning of 'new' see PARA 10 note 7. As to the meaning of 'county' see PARA 24 note 5.

10 See the Local Government Act 1972 s 262(4)(a).

11 As to the meaning of 'district' see PARA 24 note 5.

12 See the Local Government Act 1972 s 262(4)(b).

13 Local Government Act 1972 s 262(5)(a).

14 Local Government Act 1972 s 262(5)(b).

15 Local Government Act 1972 s 262(5)(c).

16 See the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 8(1)(a), (b). A council may agree to substitute for another council: see art 8(2).

17 See the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 8(1)(c).

18 Ie by an order made under the Local Government Act 1972 s 254: see PARA 6. As to the meaning of 'appropriate minister' see PARA 6 note 7.

19 As to the meaning of 'local government area' see PARA 22.

- 20 See the Local Government Act 1972 s 262(8)(a). An order under s 262(8) which extends the area for which any local statutory provision is in force is subject to the provisional order procedure: see s 262(10). For the procedure for provisional orders see s 240; and PARA 99.
- 21 See the Local Government Act 1972 s 262(8)(b). See also note 20.
- 22 See the Local Government Act 1972 s 262(8)(c). See also note 20.
- 23 See the Local Government Act 1972 s 262(8)(d). See also note 20.
- 24 In any functions of an existing local authority under a local statutory provision to which the Local Government Act 1972 s 262 applies which are not to become functions of some other authority under any provision of the Local Government Act 1972 (except s 254 (see PARA 6) and s 262) or under any other instrument made under that Act, being functions exercisable by any existing local authority abolished by that Act: see s 262(8)(e).
- 25 Local Government Act 1972 s 262(8)(e). See also note 20.
- 26 Local Government Act 1972 s 262(8)(f). See also note 20.
- 27 Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 5(a).
- 28 Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 5(b).
- 29 For these purposes, 'local Act' includes an Act confirming a provisional order: see the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 5.
- 30 See the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 5.
- 31 In so much of any local statutory provision as conferred functions on the Secretary of State with respect to the determination of tolls or other charges with respect to any fair (Local Government Act 1972 s 262(7)(a)), or as required the submission to him of, or of proposals relating to, any scale of tolls or other charges with respect to any fair (s 262(7)(b)). As to fairs see **MARKETS, FAIRS AND STREET TRADING**.
- 32 Local Government Act 1972 s 262(7).
- 33 In a provision of a local Act the Bill for which was promoted by a local authority, a provision of an Act confirming a provisional order made on the application of a local authority, and a provision of an order made on such an application which was subject to special parliamentary procedure: see the Local Government Act 1972 s 262(9), (12). It is clear that the reference in the Queen's Printer's copy of the Local Government Act 1972 s 262(12) to s 262(10) should be a reference to s 262(9). As to the special parliamentary procedure see s 240; and PARA 99. For these purposes, 'local authority' means the council of an administrative county, urban district or rural district; the municipal corporation of a borough acting by the borough council; any commissioners, trustees or other persons invested by any local Act with powers of town government or rating; any local board constituted in pursuance of the Public Health Act 1848 (repealed), the Local Government Act 1858 (repealed), the Local Government Act 1858 (Amendment) Act 1861 (repealed) or the Local Government Amendment Act 1863 (repealed); or any body of persons constituted or designated as an urban or rural sanitary authority under the Public Health Act 1875 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 1001); Local Government Act 1972 s 262(13). As to the meaning of 'local authority' generally see PARA 23.
- The limited extension of these provisions, which effectively terminated them at the end of 1979 or 1984, did not apply to: (1) a provision by virtue of which functions are exercisable by a joint board continued in existence by virtue of s 263 (see PARA 10); (2) a provision relating to a statutory undertaking; (3) a provision relating to any person's status, or the right of any person to be admitted as a freeman of any place, or the rights of any person by virtue of any relationship or association with such a freeman; (4) a protective provision for any person's benefit; or (5) a provision contained in the Green Belt (London and Home Counties) Act 1938 (see **TOWN AND COUNTRY** vol 46(2) (Reissue) PARA 938 et seq): Local Government Act 1972 s 262(12). For these purposes, 'statutory undertaking' means any railway, light railway, tramway, road transport, water transport, canal, inland navigation, ferry, dock, harbour, pier or lighthouse undertaking, any telephone undertaking, any market undertaking or any undertaking for the supply of electricity, gas, hydraulic power or district heating: s 262(13) (definition amended by the Water Act 1973 s 40(3), Sch 9).
- The Secretary of State or Welsh Ministers or any appropriate minister had power by order to exempt provisions from termination at the end of 1979 or 1984, or to postpone the date on which provisions were to cease to have effect: see Local Government Act 1972 s 262(9)(a), (b), (11). Such orders, being local in nature, are not noted in this work.
- As to the supply of electricity (within the context of the definition of 'statutory undertaking') see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041.

34 Local Government Act 1972 s 262(9).

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15. Continuance of orders etc made under repealed Acts.

Any order, rule or regulation made under any enactment¹ repealed by the Local Government Act 1972 and not constituting a local statutory provision² continues in force subject to any necessary modifications³. If any such order, rule or regulation is of such a nature that it could have been made under any enactment as it has effect on or after 1 April 1974, it may be amended, varied, repealed or revoked under that enactment⁴.

1 As to the meaning of 'enactment' see PARA 12 note 1.

2 As to the meaning of 'local statutory provision' see PARA 6 note 8. As to the continuance of local statutory provisions see PARA 14.

3 Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 4(1). This is subject to the provisions of the Local Government Act 1972 or to the express provision of the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, or any other order made under the Local Government Act 1972: Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 4(4). As to the general adaptation of enactments and instruments see PARA 12.

4 Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 4(2). Where any such order, rule or regulation cannot be so amended, it may be amended or revoked by an order made under the Local Government Act 1972 s 254 (see PARA 6): Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 4(3).

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16. Adaptation of agreements, notices, permissions etc.

Subject to express provision otherwise made¹, any of the following things done or treated by virtue of any enactment as having been done by, to or in relation to a local authority outside Greater London in connection with the discharge of any of its functions are as from 1 April 1974 to be treated as having been done by, to or in relation to the new local authority² having those functions³. Further, any such thing is to have effect as from that date as if any reference in it to a specified local authority by which those functions were exercisable before that date were a reference to the new local authority by which those functions are exercisable⁴.

The matters in which this substitution of the new for the former local authority takes effect are:

- 18 (1) any written agreement or other written instrument or any determination or declaration made or treated as made by such an authority⁵;
- 19 (2) any notice or direction given or treated as given by or to such an authority⁶;

- 20 (3) any licence, permission, consent, approval, exemption, dispensation or relaxation granted or treated as granted by or to such an authority⁷;
- 21 (4) any application, proposal or objection made or treated as made by or to such an authority⁸;
- 22 (5) any condition or requirement imposed or treated as imposed by or on such an authority⁹; or
- 23 (6) any appeal allowed by or in favour of or against such an authority¹⁰.

1 The Local Government Act 1972 s 254(3) (see the text and notes 2-10) is without prejudice to any express provision made by, or by any instrument made under, that Act, but has effect subject to any provision to the contrary so made, and in particular may be excluded from applying either wholly or to any specified extent in any particular case by order of the Secretary of State or the Welsh Ministers made by statutory instrument: s 254(5). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

Express provision is made by the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 7, to ensure that protective provisions and requirements for consents for the benefit of abolished authorities should enure for the benefit of the appropriate successor authority. Where the protective provision or consent requirement relates to a highway, it will enure for the benefit of the highway authority (see art 7(1)(a), (2)(a)); if it relates to a matter transferred by or under the Act in question to any authority, the benefit will enure for that authority (see art 7(1)(b), (2)(b)); and, in any other case, it will enure for the benefit of the council of the district in which the subject matter is situate (see art 7(1)(c), (2)(c)). As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq. Article 7 extends to protective provisions and requirements for consents in local Acts and in orders made under or confirmed by any Act (see art 7(1), (2)), but does not apply where provision is made under the Local Government Act 1972 s 254, as extended by s 262(8) (see PARA 6) or under s 262(8) (see PARA 14) (see the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 7(3)).

2 As to the meaning of 'local authority' see PARA 23. As to the meaning of 'new' see PARA 10 note 7.

3 See the Local Government Act 1972 s 254(3). As to the allocation of functions see PARA 579 et seq. If there is any doubt as to the identity of a local authority to whom any particular functions are transferred, that authority is to be taken to be such authority as may be specified in a direction given by a Minister of the Crown concerned with the discharge of those functions: s 254(4). As to the general substitution of references to the new authorities for references to the former authorities see PARAS 12, 14.

4 See the Local Government Act 1972 s 254(3).

5 Local Government Act 1972 s 254(3).

6 Local Government Act 1972 s 254(3).

7 Local Government Act 1972 s 254(3).

8 Local Government Act 1972 s 254(3).

9 Local Government Act 1972 s 254(3).

10 Local Government Act 1972 s 254(3).

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(iv) Local Government Reforms 1974-2005

17. Changes under the Local Government Act 1985.

The Local Government Act 1985 abolished the Greater London Council¹ and the metropolitan county councils² as from 1 April 1986³, and provided for the transfer of functions to London borough councils⁴, metropolitan district councils⁵ and other existing authorities⁶. Residuary

property, rights and liabilities were vested in residuary bodies established for the purpose⁷, and provision was made to safeguard the interests of staff employed by the authorities affected⁸.

The Local Government Act 1985 also established joint authorities to act as fire and civil defence authorities and passenger transport authorities⁹.

The Local Government Act 1985 contains miscellaneous supplementary provisions relating to the abolition of the Greater London Council and the metropolitan county councils and to the establishment of the new joint authorities¹⁰.

1 As to the abolition of the Greater London Council see also PARA 35; and **LONDON GOVERNMENT**.

2 I.e. the councils set up to administer the metropolitan county councils established under the Local Government Act 1972 s 1(1), (2), Sch 1 Pt I. See also PARA 24.

3 See the Local Government Act 1985 s 1(1), (2); and PARA 24.

4 See PARA 35; and **LONDON GOVERNMENT**.

5 See PARA 24 et seq. As to subsequent changes in Wales see PARAS 18, 37 et seq.

6 I.e. under the Local Government Act 1985 Pt II (ss 2-17). The transfers were generally effective from 1 April 1986: see ss 1(2), 2. As to functions see further PARA 579 et seq.

Functions relating to listed buildings, conservation areas and ancient monuments were transferred to the Historic Buildings and Monuments Commission for England: see s 6, Sch 2 (amended by the Housing and Planning Act 1986 s 49(2), Sch 12 Pt III; and the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I). As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq.

Functions relating to national parks and the countryside were transferred to the London borough councils, the Common Council of the City of London and the metropolitan district councils: see the Local Government Act 1985 s 7, Sch 3 (amended by the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I). As to national parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) para 636 et seq.

Functions relating to highways, streets and bridges were transferred to the London borough councils, the Common Council of the City of London and the metropolitan district councils: see the Local Government Act 1985 s 8, Sch 4 (s 8 amended by the Local Government Finance Act 1988 s 149, Sch 13 Pt II). See further **HIGHWAYS, STREETS AND BRIDGES**.

Functions relating to waste regulation and disposal were transferred to the London borough councils, the Common Council of the City of London and the metropolitan district councils: see the Local Government Act 1985 s 9, Sch 6. As to waste regulation and disposal see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620 et seq. Provision was also made for joint arrangements for waste disposal functions: see s 10 (amended by the Environmental Protection Act 1990 s 162, Sch 15 para 26); the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884 (amended by the Radioactive Substances Act 1993 s 50, Sch 6 Pt IV; and SI 1986/564); the Local Government Reorganisation (Property etc) (No 2) Order 1986, SI 1986/413; and the Local Government Reorganisation (Miscellaneous Provision) (No 5) Order 1986, SI 1986/564.

Provision was made for the exercise of certain land drainage functions in London: see the Local Government Act 1985 s 11(1) (repealed); and the Local Government Act 1985 (Land Drainage Functions) Order 1986, SI 1986/208 (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 3(2), Sch 3 Pt II and spent in part).

Provision was also made in relation to local valuation panels: see the Local Government Act 1985 s 14 (repealed). As to valuation panels, later renamed valuation tribunals, see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 147-148.

Various miscellaneous functions, including functions conferred by local statutory provisions, were transferred from the Greater London Council to London boroughs and the Common Council of the City of London, and from metropolitan county councils to metropolitan district councils: see ss 16, 17, Sch 8 (amended by the Housing (Consequential Provisions) Act 1985 s 3, Sch 1 Pt I; the Weights and Measures Act 1985 ss 97, 98, Sch 12 para 11, Sch 13 Pt I; the Food Safety Act 1990 s 59(1), (4), Sch 3 para 31, Sch 5; the Statute Law (Repeals) Act 1993; and the Statute Law (Repeals) Act 1998).

7 See the Local Government Act 1985 Pt VII (ss 57-67). As to the establishment of the residuary bodies see s 57, Sch 13. As to the vesting of residuary property, rights and liabilities in residuary bodies see ss 62, 66. The residuary bodies were responsible for the payment of outstanding loans (see s 58), redundancy and compensation payments (see s 59 (repealed)) and pensions (see ss 60, 61 (s 60 amended by the Coroners Act

1988 s 36(1), Sch 3 para 18; the Fire and Rescue Services Act 2004 Sch 1 paras 58, 60, Sch 2)), and had to keep accounts which were subject to audit (see the Local Government Act 1985 ss 63, 78, 79 (all repealed)). As to the commutation of annual or periodic payments into a single payment see s 64 (repealed). As to borrowing and lending see the Local Government Act 1985 s 75 (repealed with savings); and as to block grants see s 81 (repealed). As to the treatment and distribution of money see s 77 (amended by the Local Government and Housing Act 1989 s 194, Sch 12 Pt I; the Local Government Finance (Capital Money) (Consequential Amendments) Order 1990, SI 1990/268, art 2, Schedule (revoked); the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 26; and the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1993, SI 1993/616, art 3, Sch 2 Pt I para 5). In exercising their functions, residuary bodies had to comply with any directions given by the Secretary of State: see the Local Government Act 1985 s 65 (repealed). Provision was made for the winding up of the residuary bodies: see s 67. Most of the residuary bodies have now been wound up, although the London Residuary Body retains some functions under the Education Reform Act 1988: see ss 179-181; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 33.

8 See the Local Government Act 1985 Pt VI (ss 50-56).

9 As to joint authorities see PARA 47 et seq.

10 See the Local Government Act 1985 Pt IX (ss 84-106).

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18. Changes in Wales.

The Local Government (Wales) Act 1994 provided for there to be new principal areas¹ and communities² for the administration of local government in Wales³ and established new principal councils⁴. Residuary property, rights and liabilities of the old authorities were vested in the Residuary Body for Wales⁵, and the Act contains provisions for the transfer of staff⁶ and other transitional provisions⁷. In Wales there is now a single tier of principal councils, consisting of county councils and county borough councils⁸.

Provision has been made for the devolution of certain powers to the National Assembly for Wales and the Welsh Ministers⁹. Due to the nature of the relationship between central and local government, the transfer of various functions to some extent affects the operation of local government in Wales¹⁰.

1 As to the meaning of 'principal area' in relation to Wales see PARAS 23, 37. As to areas and authorities in Wales see PARA 37 et seq.

2 See further PARA 41 et seq.

3 See the Local Government Act 1972 s 20, Sch 4 (substituted by the Local Government (Wales) Act 1994 s 1, Sch 1). See further PARA 37 et seq.

4 See the Local Government Act 1972 s 37, Sch 5 (s 37 substituted by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 6; and the Local Government Act 1972 Sch 5 substituted by the Local Government (Wales) Act 1994 s 3, Sch 3 and amended by the Statute Law (Repeals) Act 2004). See further PARA 37 et seq. As to the meaning of 'principal council' see PARAS 23, 37.

Provision was made for the new principal councils to be local planning authorities: see the Local Government (Wales) Act 1994 ss 18; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq. Other functions specifically transferred to the new principal councils include functions relating to highways, road traffic and transport (see s 22(1), Sch 7; and **HIGHWAYS, STREETS AND BRIDGES; ROAD TRAFFIC**), functions relating to housing (see s 22(2), Sch 8; and **HOUSING**), functions relating to public health (see s 22(3), Sch 9 (now spent); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**), functions relating to social services (see s 22(4), Sch 10; and **SOCIAL SERVICES AND COMMUNITY CARE**), and functions relating to water, land drainage and coast protection (see s 22(5), Sch 11; and **WATER AND WATERWAYS**).

Provision is also made for the construction of references in earlier legislation to authorities by whom functions are to be exercised: see s 17 (repealed); and PARA 579 note 2.

5 See the Local Government (Wales) Act 1994 s 39, Sch 13 (amended by the Merchant Shipping Act 1995 Sch 12; the Housing Act 1996 Sch 18 para 30, Sch 19, Pt XIV; the Justice of the Peace Act 1997 Sch 5 para 35(3); the Audit Commission Act 1988 Sch 3 para 27; the Data Protection Act 1998 Sch 16 Pt I; the Government of Wales Act 1998 ss 150, 153, Sch 18 Pt VII; the Race Relations (Amended) Act 2000 Sch 3). The Residuary Body for Wales has now been wound up: see the Local Government (Wales) Act 1994 Sch 13 para 18 (amended by the Government of Wales Act 1998 s 150); and the Residuary Body for Wales (Winding Up) Order 1998, SI 1998/2859 (amended by SI 2001/3649).

6 Provision was made for the transfer of staff (see the Local Government (Wales) Act 1994 ss 41, 42 (s 41 amended by the Employment Rights Act 1996 s 240, Sch 1 para 63(1), (2)), and for redundancy and compensation (see the Local Government (Wales) Act 1994 s 43 (amended by the Employment Rights Act 1996 Sch 1 para 63(1), (3)); the Local Government (Wales) Act 1994 s 44 (amended by the Employment Rights Act 1996 s 241, Sch 1 para 63(1), (4), Sch 2 para 4); and the Local Government (Wales) Act 1994 s 45 (amended by the Employment Rights Act 1996 Sch 1 para 63(1), (5))). See also the Local Government Reorganisation (Wales) (Staff) Order 1996, SI 1996/501 (amended by SI 1996/905); the Local Government Reorganisation (Wales) (Staff) (No 2) Order 1996, SI 1996/905; the Local Government Reorganisation (Wales) (Staff) (No 3) Order 1996, SI 1996/1214; and the Local Government Reorganisation (Wales) (Limitation of Compensation) Regulations 1995, SI 1995/1039. A Staff Commission for Wales was set up to oversee the transfer: see the Local Government (Wales) Act 1994 s 40, Sch 14 (repealed).

7 Provision was made for the establishment of transition committees to consider and advise on transitional matters: see the Local Government (Wales) Act 1994 s 46. Provision was also made to distinguish new areas from old areas having the same name (see s 47), and to ensure that communities within a group of communities would all be within the same new principal area (see s 48). Joint boards were continued, except where the functions of the joint board became exercisable by a new principal council: see s 59 (amended by the Environment Act 1995 s 120(3), Sch 24). Joint committees were also continued, although new principal councils could make different arrangements for the discharge of functions: see the Local Government (Wales) Act 1994 s 59 (as so amended). Provision was made relating to port health districts and port health authorities: see s 59 (as so amended). As to port health districts and port health authorities see further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

Property held for charitable purposes or for Welsh Church funds was transferred to the new councils: see ss 49, 50. Controls on the disposal of land or buildings and on the power to enter into contracts were imposed on the old authorities (see s 51 (amended by the Local Government Act 2003 Sch 7 paras 56, 57)), and provisions relating to accounts and reports were applied (see the Local Government (Wales) Act 1994 s 52). The validity of anything done by an old authority was not affected by its abolition, and anything which was in process of being done in the exercise of functions of an old authority could be continued by or in relation to the successor authority: see s 53. Transitional agreements could be made as to property and finance: see s 56.

Local statutory provisions were continued in force: see ss 57, 58. The Lord Chancellor has power by order to make such incidental, consequential, transitional or supplemental provision in relation to magistrates' courts, justices of the peace and commission areas as he thinks necessary or expedient in consequence of any provisions of the Local Government (Wales) Act 1994: see s 55 (amended by the Access to Justice Act 1999 ss 76(2), 106, Sch 10 para 46, Sch 15 Pt V; and the Constitutional Reform Act 2005 Sch 4 paras 233, 234). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. As to magistrates' courts, justices of the peace and commission areas see **MAGISTRATES**. As to the orders that have been made see the Magistrates' Courts (Wales) (Consequences of Local Government Changes) Order 1996, SI 1996/675 (amended by the Justices of the Peace Act 1997 s 73(3), Sch 6 Pt II; and the Access to Justice Act 1999 Sch 15 Pt V). Other orders have been made but, being local in nature, are not noted in this work. The Secretary of State has a general power to make by order such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient in consequence of or for giving effect to the Local Government (Wales) Act 1994: see s 54. As to such orders see the Local Government Reorganisation (Wales) (Transitional Provisions) Order 1994, SI 1994/3124; the Local Government Reorganisation (Wales) (Special Grant) Order 1995, SI 1995/128; the Local Government Reorganisation (Wales) (Transitional Provisions) Order 1995, SI 1995/570; the Local Government Reorganisation (Wales) (Transitional Provisions No 2) Order 1995, SI 1995/1042; the Local Government Reorganisation (Wales) (Transitional Provisions No 3) Order 1995, SI 1995/1161; the Local Government Reorganisation (Wales) (Consequential Amendments No 2) Order 1995, SI 1995/1510; the Local Government Reorganisation (Wales) (Transitional Provisions No 4) Order 1995, SI 1995/2563; the National Park Authorities (Wales) Order 1995, SI 1995/2803 (amended by SI 1996/534; SI 1996/1224; SI 1997/633; SI 2007/3423); the Local Government (Registration Service in Wales) Order 1995, SI 1995/3106; the Local Government Reorganisation (Wales) (Council Tax Reduction Scheme) Order 1996, SI 1996/56; the Local Government Reorganisation (Wales) (Finance) Order 1996, SI 1996/88; the Local Government Reorganisation (Wales) (Calculation of Basic Amount of Council Tax) Order 1996, SI 1996/335; the Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996, SI 1996/525; the Local Government Reorganisation (Wales) (Property, etc) Order 1996, SI 1996/532 (amended by SI 1996/906); the Local Government Reorganisation (Wales) (Rent Officers) Order 1996, SI 1996/533; the Local Government

Reorganisation (Wales) (Housing Benefit and Council Tax Benefit) Order 1996, SI 1996/549; the Local Government Reorganisation (Wales) (Finance) (Miscellaneous Amendments and Transitional Provisions) Order 1996, SI 1996/619; the Local Government Reorganisation (Wales) (Capital Finance and Miscellaneous Provisions) Order 1996, SI 1996/910 (amended by SI 1996/1366; SI 1999/1782); the Local Government Reorganisation (Wales) (Consequential Amendments No 2) Order 1996, SI 1996/1008; the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071; the Combined Fire Authorities (Protection from Personal Liability) (Wales) Order 1997, SI 1997/2818 (amended by SI 2005/2929); the Combined Fire Authorities (Secure Tenancies) (Wales) Regulations 1998, SI 1998/2214 (amended by SI 2005/2929); and the Residuary Body for Wales (Winding Up) Order 1998, SI 1998/2859 (amended by SI 2001/3649). As to the power to make regulations, orders and directions under the Local Government (Wales) Act 1994 see further s 63. Other saving and transitional provision was made by s 66, Sch 17 (amended by the Environment Act 1995 Sch 24; and the Audit Commission Act 1998 s 54(1), Sch 3 para 228).

8 See PARA 37 et seq.

9 See the Government of Wales Act 1998 and the Government of Wales Act 2006; PARA 97; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

10 As to the relationship between central and local government see PARA 92 et seq.

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19. Changes in London.

The Greater London Authority Act 1999 established the Greater London Authority, which is comprised of the London Assembly and the Mayor of London¹. The London borough councils and the Common Council of the City of London remain in place, although some of their responsibilities and functions have been affected by the creation of the Greater London Authority². The powers of the Greater London Authority were further extended by the Greater London Authority Act 2007³.

1 See the Greater London Authority Act 1999; PARA 35; and **LONDON GOVERNMENT**. As to the Greater London Authority, the London Assembly and the Mayor of London see **LONDON GOVERNMENT**.

2 See further PARA 35; and **LONDON GOVERNMENT**.

3 See the Greater London Authority Act 2007; and **LONDON GOVERNMENT**.

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20. The Local Government Act 2000.

The Local Government Act 2000¹ makes provision with respect to the functions and procedures of local authorities². In particular, the Local Government Act 2000 provides a general power to promote well-being³, makes provision as to the conduct of local authority members and employees⁴, and provides for local authorities to make arrangements for the creation and operation of executives responsible for various local authority functions⁵. It also makes some provision in respect of local authority elections⁶.

- 1 As to the extent of the Local Government Act 2000 see s 109. Provision is made for the commencement of the Local Government Act 2000 in s 108.
- 2 See the Long Title to the Local Government Act 2000.
- 3 See the Local Government Act 2000 Pt I (ss 1-9); and PARAS 463-464.
- 4 See the Local Government Act 2000 Pt III (ss 49-83); and PARA 232 et seq.
- 5 See the Local Government Act 2000 Pt II (ss 10-48); and PARA 303 et seq.
- 6 See the Local Government Act 2000 Pt IV (ss 84-89); and PARA 134.

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(v) Local Government and Public Involvement in Health Act 2007

21. Overview.

The Local Government and Public Involvement in Health Act 2007 principally affects England¹. It continues the trend towards unitary government², encourages whole council elections and the establishment of single member wards³, and abolishes the option of having executive arrangements comprising a directly elected mayor and a council manager⁴. It also extends the powers of local authorities to enter into strategic partnerships and agreements⁵ and establishes joint waste authorities⁶.

The extent of central government control over local authority byelaws is reduced⁷, the Audit Commission's role reformed⁸ and the jurisdiction of the Local Government Ombudsman expanded⁹. The 'best value' regime is also changed, particularly as regards parishes and communities¹⁰, and the law governing local authority controlled entities is simplified¹¹.

The Act also makes substantial changes in relation to the enforcement of ethical standards governing the conduct of councillors¹², extends the role of local authorities and the public in the provision of health services¹³ and enables authorities to give individual councillors responsibility for matters relating to their wards¹⁴.

- 1 See the Local Government and Public Involvement in Health Act 2007 s 244.
- 2 See the Local Government and Public Involvement in Health Act 2007 Pt 1 (ss 1-30); and PARAS 57-67.
- 3 See the Local Government and Public Involvement in Health Act 2007 Pt 2 (ss 31-61); and PARAS 135-139.
- 4 See the Local Government and Public Involvement in Health Act 2007 Pt 3 (ss 62-74); and PARAS 336, 367-368.
- 5 See the Local Government and Public Involvement in Health Act 2007 Pt 5 (ss 103-128); and PARAS 387-392.
- 6 See the Local Government and Public Involvement in Health Act 2007 Pt 11 (ss 205-211); and PARA 51.
- 7 See the amendments made by the Local Government and Public Involvement in Health Act 2007 Pt 6; and PARA 553 et seq.
- 8 See the amendments made by the Local Government and Public Involvement in Health Act 2007 Pt 8 (ss 145-167); and PARA 744 et seq.

9 See the amendments made by the Local Government and Public Involvement in Health Act 2007 Pt 9 (ss 168-182); and PARA 839 et seq.

10 See the amendments made by the Local Government and Public Involvement in Health Act 2007 Pt 7 (ss 136-144); and PARA 686 et seq. Further changes are also made to the best value regime by the Local Government (Wales) Measure 2009: see PARA 703 et seq.

11 See the Local Government and Public Involvement in Health Act 2007 Pt 12 (ss 212-218); and PARA 406.

12 See the amendments made by the Local Government and Public Involvement in Health Act 2007 Pt 10 (ss 183-204); and PARA 230 et seq.

13 See the Local Government and Public Involvement in Health Act 2007 Pt 14 (ss 221-234); **HEALTH SERVICES**; and PARA 399.

14 See the Local Government and Public Involvement in Health Act 2007 Pt 16 (ss 236-239) and amendments made by Pt 16; and PARAS 378, 407 et seq.

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(2) AREAS AND AUTHORITIES

(i) In general

22. Local government areas and authorities.

For the purposes of local government, England and Wales are divided into local government areas¹. 'Local government area', in relation to England, means a county, Greater London, a district, a London borough or a parish; and, in relation to Wales, means a county, county borough or community².

Local government is generally based on a system of principal councils³, and parish or community councils⁴. There are generally two tiers of principal councils, although in some areas there are now unitary authorities⁵. Legislation may specify the various councils to which it applies, or may use the general term 'local authority'⁶.

In addition to its general functions, a local authority may act in other capacities, such as that of a local education authority⁷, a social services authority⁸, a planning authority⁹ or a licensing authority¹⁰. For the purposes of the requirements of best value, local authorities are best value authorities¹¹.

A local authority may work closely with other bodies with interests and responsibilities in its area¹², and may enter into public private partnerships¹³.

1 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the meaning of 'England' see PARAS 1 note 1, 24 note 1; and as to the meaning of 'Wales' see PARA 1 note 1.

2 Local Government Act 1972 s 270(1) (definition amended by the Local Government (Wales) Act 1994 s 1(6)).

3 As to principal councils in England see PARA 24 et seq; and as to principal councils in Wales see PARA 37 et seq. As to the meaning of 'principal council' see PARA 23.

4 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

- 5 See PARA 24.
- 6 As to the meaning of 'local authority' see PARA 23.
- 7 As to local education authorities see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 et seq.
- 8 As to local social services authorities see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1005.
- 9 As to planning authorities see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.
- 10 See the Licensing Act 2003 s 3; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 3.
- 11 See the Local Government Act 1999 s 1; and PARAS 688, 704.
- 12 Eg the Countryside Agency (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) para 523 et seq) and regional chambers and regional development agencies (see **TRADE AND INDUSTRY**).
- 13 Projects under the private finance initiative are a form of public private partnership: see PARA 424.

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23. Meaning of 'local authority'.

In general 'local authority' means, in relation to England, a county council, a district council, a London borough council or a parish council and, in relation to Wales, a county council, county borough council or community council¹. However, local authorities are variously defined for the purposes of different Acts and different functions².

Some local authorities are sometimes described as principal councils. In general, 'principal council' means a council elected for a principal area³; and 'principal area' means a non-metropolitan county, a district or a London borough, but, in relation to Wales, means a county or county borough⁴.

1 Local Government Act 1972 s 270(1) (definition amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994 ss 1, 66(5), Sch 15 paras 1, 57). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 The definitions of 'local authority' for the purposes of other Acts dealt with in this title are as follows:

- 1 (1) for the purposes of the Local Government (Records) Act 1962, 'local authority' means the council of a county, county borough, London borough or county district, the Broads Authority, the Common Council of the City of London, the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 316 et seq), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), an authority established under s 10 (waste regulation and disposal authorities: see PARA 17; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620 et seq), a parish council or parish meeting, or the Council of the Isles of Scilly (see the Local Government (Records) Act 1962 s 8(1) (amended by the London Government Act 1963 s 83(1), Sch 17 para 27; the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 ss 84, 102(2), Sch 14 Pt II para 39, Sch 17; the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 4; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 20(2); the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 2; the Police Act 1996 s 103(1), Sch 7 Pt I para 1; the Greater London Authority Act 1999 ss 325, 328(8), Sch 27 para 17, Sch 29 Pt I para 3; SI 1986/148; SI 1990/1765; and by virtue of the Local Government Act 1972 s 179(1), (3));
- 2 (2) for the purposes of the Local Authorities (Land) Act 1963, 'local authority' means a local authority within the meaning of the Local Government Act 1933 (repealed: see now the definition

in the Local Government Act 1972 s 270(1); and the text and note 1), other than a parish council (see the Local Authorities (Land) Act 1963 s 14(1));

- 3 (3) for the purposes of the Local Authorities (Goods and Services) Act 1970, 'local authority', in relation to England and Wales, means the council of any county, county borough, district, London borough, the Greater London Authority, the Broads Authority, the Common Council of the City of London, the Council of the Isles of Scilly, any joint board, joint committee or combined authority, any joint authority established by the Local Government Act 1985 Pt IV (see PARA 47 et seq), any authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities), the London Fire and Emergency Planning Authority, Transport for London and the London Development Agency (see the Local Authorities (Goods and Services) Act 1970 s 1(4) (amended by the Local Government Act 1972 Sch 30; the Local Government Act 1985 Sch 14 Pt II para 47, Sch 17; the Education Reform Act 1988 Sch 13 Pt I; the Norfolk and Suffolk Broads Act 1988 Sch 6 para 8(1); the Local Government (Wales) Act 1994 s 25(8); the Greater London Authority Act 1999 s 388; the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 29; and by virtue of the Local Government Act 1972 s 179(1), (3));
- 4 (4) for the purposes of the Local Government Act 1972 Pt VI (ss 101-109), 'local authority' includes the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple, the London Fire and Emergency Planning Authority, any joint authority except a police authority, a joint waste authority, a joint board on which a local authority within the meaning of the Local Government Act 1972 or any of the foregoing authorities is represented and, without prejudice to the foregoing, any port health authority (see s 101(13) (amended by the Local Government Act 1985 Sch 14 Pt I para 15; the Education Reform Act 1988 Sch 13 Pt I; the Greater London Authority Act 1999 s 332(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 9);
- 5 (5) for the purposes of the Local Government Act 1972 Sch 12 Pt VI (paras 39-46), 'local authority' includes a joint authority and a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority: see the Local Government Act 1972 Sch 12 para 46 (added by the Local Government Act 1985 Sch 14 para 35(3); and amended by the Police and Magistrates' Courts Act 1994 Sch 4 Pt I para 15(4); the Police Act 1996 Sch 7 para 1(2)(h); and the Police Act 1997 Sch 6 para 10(4));
- 6 (6) for the purposes of the Local Government Act 1974, 'local authority' means a county council in England, a district council, the Broads Authority, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly (see s 34 (amended by the Local Government Act 1985 Sch 17; the Norfolk and Suffolk Broads Act 1988 Sch 6 para 12; the Local Government (Wales) Act 1994 Sch 16 para 44) and the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 7, 16(1), (3));
- 7 (7) for the purposes of the Local Government (Miscellaneous Provisions) Act 1976 Pt I (ss 7-44), 'local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly (see s 44(1) (definition substituted by the Local Government Act 1985 Sch 14 Pt II para 53; and amended by Sch 17; and SI 1996/3071)), and:
 1. (a) in the Local Government (Miscellaneous Provisions) Act 1976 ss 13-16, s 29, ss 38-39 and s 41, 'local authority' includes a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (see PARA 47 et seq), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) and the London Fire and Emergency Planning Authority (see the Local Government (Miscellaneous Provisions) Act 1976 s 44(1)(a) (amended by the Education Reform Act 1988 Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 Sch 4 Pt I para 18; the Police Act 1996 Sch 7 Pt I para 1; the Police Act 1997 s 88, Sch 6 para 13; the Greater London Authority Act 1999 Sch 27 para 41, Sch 29 Pt I para 24, Sch 34 Pt VIII; and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 33(a));
1
 2. (b) in the Local Government (Miscellaneous Provisions) Act 1976 ss 16, 19, 30, 36, 39 and s 41, 'local authority' includes a parish council and a community council (see s 44(1)(b));
2
 3. (c) the Local Government (Miscellaneous Provisions) Act 1976 ss 13, 15-16, 29-30, 32, 38, 39 and s 41 have effect as if the Broads Authority were a local authority and the Broads were its local government area (see s 44(1A) (added by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 15));
3

4. (d) the Local Government (Miscellaneous Provisions) Act 1976 s 16 has effect as if the Environment Agency were a local authority (see s 44(1B) (added by the Environment Act 1995 s 120(1), Sch 22 para 33));
4
5. (e) in the Local Government (Miscellaneous Provisions) Act 1976 s 40, a 'local authority' is a joint authority established by the Local Government Act 1985 Pt IV, an authority established under s 10 (waste regulation and disposal authorities), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities), the London Fire and Emergency Planning Authority and the South Yorkshire Pensions Authority (see the Local Government (Miscellaneous Provisions) Act 1976 s 44(1)(c) (definition added by SI 1990/1795; and amended by the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 24(b); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 33(b)));
5
 - 8 (8) for the purposes of the Local Government Act 1985, 'local authority' has the same meaning as in the Local Government Act 1972 (see the text and note 1) (definition applied by virtue of the Local Government Act 1985 s 105(1), (2));
 - 9 (9) for the purposes of the Local Government Act 1986 Pt II (ss 2-6), 'local authority' generally means a county, district, or London borough council, the Common Council of the City of London (as local authority, police authority or port health authority), the Broads Authority (except in s 3), a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (see PARA 47 et seq), the London Fire and Emergency Planning Authority, the Council of the Isles of Scilly, or a parish or community council, and includes any authority, board or committee which discharges functions which would otherwise fall to be discharged by two or more such authorities (see the Local Government Act 1986 s 6(1)-(3) (amended by the Education Reform Act 1988 Sch 13 Pt I; the Norfolk and Suffolk Broads Act 1988 Sch 6 para 27; the Police and Magistrates' Courts Act 1994 Sch 4 Pt I para 29; the Police Act 1996 Sch 7 Pt I para 1; the Police Act 1997 Sch 6 para 23; the Greater London Authority Act 1999 Sch 27 para 54, Sch 29 Pt I para 45; and the Criminal Justice and Police Act 2001 Sch 6 para 41, Sch 7 Pt 5(1)));
 - 10 (10) for the purposes of the Local Government and Housing Act 1989 Pt I (ss 1-21), any reference to a 'local authority' is a reference to a body of one of the following descriptions: a county council; a county borough council; a district council; a London borough council; the Common Council of the City of London in its capacity as a local authority, police authority or port health authority; the Council of the Isles of Scilly; a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES**); a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq); the Metropolitan Police Authority; an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities); an authority established under the Local Government Act 1985 s 10 (waste disposal authorities: see PARA 17; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620 et seq); a joint authority established by Pt IV (see PARA 47 et seq); the London Fire and Emergency Planning Authority; any body established pursuant to an order under the Local Government Act 1985 s 67 (successors to residuary bodies: see PARA 17); the Broads Authority; any joint board the constituent members of which consist of any of the bodies specified above; and a joint planning board constituted for an area in Wales outside a national park by an order under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30) (see the Local Government and Housing Act 1989 s 21(1) (amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 4 Pt I para 38, Sch 9 Pt I; the Environment Act 1995 s 78, Sch 10 para 31(1); the Police Act 1996 Sch 7 Pt I para 1(1), (2)(zd); the Police Act 1997 Sch 6 para 29; the Greater London Authority Act 1999 Sch 27 para 63, Sch 29 Pt I para 55; the Criminal Justice and Police Act 2001 Sch 6 para 50, Sch 7 Pt 5(1); the Fire and Rescue Services Act 2004 Sch 1 para 71 and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 paras 46, 47; and SI 1996/3071));
 - 11 (11) any reference in the Local Government and Housing Act 1989 Pt V (ss 67-73) to a local authority is a reference to a body of one of the following descriptions: a county council; a county borough council; a district council; the Greater London Authority; a functional body (within the meaning of the Greater London Authority Act 1999); a London borough council; the Common Council of the City of London in its capacity as a local authority, police authority or port health authority; the Council of the Isles of Scilly; a parish council; a community council; a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; a police authority established under the Police Act 1996 s 3; an authority established under the Local Government Act 1985 s 10 (waste disposal authorities); a

joint authority established by Pt IV (ss 23-42) (see PARA 47 et seq); any body established pursuant to an order under s 67 (successors to residuary bodies) (see PARA 17); the Broads Authority; a National Park Authority; any joint board the constituent members of which consist of any of the bodies specified in this heading; a joint planning board constituted for an area in Wales outside a National Park by an order under the Town and Country Planning Act 1990 s 2(1B); and a Passenger Transport Executive (see the Local Government and Housing Act 1989 s 67 (amended by the Civil Contingencies Act 2004 Sch 2 para 10(3)(b); Police and Magistrates' Courts Act 1994 Sch 4 para 39, Sch 9 Pt I, Sch 9 Pt I; the Environment Act 1995 Sch 8 para 10, Sch 10 para 31(3), Sch 24; the Police Act 1996 Sch 7 para 1(2)(zd); the Greater London Authority Act 1999 s 393; the Criminal Justice and Police Act 2001 Sch 6 para 52, Sch 7 Pt 5(1); the Fire and Rescue Services Act 2004 Sch 1 para 71(3); and SI 1996/6071; and prospectively repealed by the Local Government and Public Involvement in Health Act 2007 ss 216(1), 241, Sch 18 Pt 16));

- 12 (12) for the purposes of the Local Government Act 1992, 'local authority' means a principal council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple or a parish council (see s 28(1));
- 13 (13) for the purposes of the Deregulation and Contracting Out Act 1994 Pt II (ss 69-79B), 'local authority' means:
 6. (a) in relation to England, a county council, district council, London borough council, the Greater London Authority acting through the Mayor of London, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple, the Council of the Isles of Scilly, a parish council, a National Park authority, a functional body within the meaning of the Greater London Authority Act 1999, an authority established under the Local Government Act 1985 s 10 (waste disposal authorities); a joint authority established by Pt 4 (ss 23-42) (fire and rescue services and transport), a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies, a police authority established under the Police Act 1996 s 3, an authority established by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) and any other body specified by regulations under the Deregulation and Contracting Out Act 1994 s 79C (ss 79(1)(a), 79A (s 79(1)(a) amended and s 79A added by the Local Government and Public Involvement in Health Act 2007 s 239(2)(a), (3)));
6
 7. (b) in relation to Wales, a county council, county borough council, a community council, a National Park authority, a joint planning board constituted for an area in Wales outside a National Park by an order under the Town and Country Planning Act 1990 s 2(1B), a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies, a police authority established under the Police Act 1996 s 3 and any other body specified by regulations under the Deregulation and Contracting Out Act 1994 s 79C (ss 79(1)(b), 79B (s 79(1)(b) amended and s 79B added by the Local Government and Public Involvement in Health Act 2007 s 239(2)(b), (3)));
7
- 14 (14) for the purposes of the Local Government (Contracts) Act 1997, the following are local authorities:
 8. (a) any authority with respect to the finances of which the Local Government Act 2003 Pt 1 Ch 1 (ss 1-20) (capital finance) has effect at the time in question (Local Government (Contracts) Act 1997 s 1(3)(a) (amended by the Local Government Act 2003 s 127(1), Sch 7, para 64));
8
 9. (b) any probation committee (now known as local probation boards) (Local Government (Contracts) Act 1997 s 1(3)(b)); and
9
 10. (c) until a day to be appointed, the Receiver for the Metropolitan Police District (s 1(3) (prospectively repealed by the Greater London Authority Act 1999 s 423, Sch 27 para 116, Sch 34 Pt VII));
10
 - 15 (15) for the purposes of the Audit Commission Act 1998, 'local authority' has the same meaning as in the Local Government Act 1972 (see the text and note 1) (definition applied by the Audit Commission Act 1998 s 53(2));
 - 16 (16) for the purposes of the Local Government Act 1999 Pt I (ss 1-29), 'local authority' means:
 11. (a) in relation to England, a county council, a district council, a London borough council, the Council of the Isles of Scilly, the Common Council of the City of London in its capacity as a local authority, and the Greater London Authority so far as it exercises its functions through the Mayor of London (s 1(2)

(amended by the Local Government and Public Involvement in Health Act 2007 ss 136, 144(2), Sch 8 Pt 1 para 2(3)); and

11

12. (b) in relation to Wales, a county council, and a county borough council (Local Government Act 1999 s 1(6) (added by the Public Audit (Wales) Act 2004 s 50, Sch 1 paras 1, 2; and amended by the Local Government and Public Involvement in Health Act 2007 s 136(c));

12

17 (17) for the purposes of the Local Government Act 2000 Pt I (ss 1-9), 'local authority' means:

13. (a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly and an eligible parish council (s 1(a) (renumbered as s 1(1)(a) and amended by the Local Government and Public Involvement in Health Act 2007 s 77(1)-(3));

13

14. (b) in relation to Wales, a county council or a county borough council (Local Government Act 2000 s 1(b) (renumbered as s 1(1)(b) by the Local Government and Public Involvement in Health Act 2007 s 77(1), (2));

14

18 (18) for the purposes of the Local Government Act 2000 Pt II (ss 10-48) and s 99(1), 'local authority' means, in relation to England, a county council, a district council or a London borough council and, in relation to Wales, a county council or a county borough council (see ss 48(1), 99(2));

19 (19) for the purposes of the Local Government Act 2000 Pt IV (ss 84-89), 'local authority', means, in relation to England, a principal council (county council, a district council or a London borough council) or a parish council; and, in relation to Wales, means a principal council (county council or county borough council) or a community council: s 84.

20 (20) for the purposes of the Local Government Act 2003 Pt I (ss 1-14) 'local authority' means a county council, a county borough council, a district council, the Greater London Authority, a functional body within the meaning of the Greater London Authority Act 1999, a London borough council, the Common Council of the City of London in its capacity as a local authority, police authority or port health authority, the Council of the Isles of Scilly, an authority established under the Local Government Act 1985 s 10 (waste disposal authorities), a joint authority established by Pt IV (ss 23-42) (fire and rescue services and transport: see PARA 47 et seq), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities), a joint planning board constituted for an area in Wales outside of a National Park by an order under the Town and Country Planning Act 1990 s 2(1B), a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 or a scheme to which s 4 applies, a police authority established under the Police Act 1996 s 3, any other body specified for the purposes of the Local Government Act 2003 s 23(1) by regulations under s 23(2) (see s 23(1) (amended by SI 2005/886; the Civil Contingencies Act 2004 s 32(1), Sch 2 para 10(3)(e); the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 100; and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 para 55(1), (2));

21 (21) for the purposes of the Local Government Act 2003 Pt III, Ch 1 (ss 31-40) 'local authority' means a county council, a county borough council, a district council, the Greater London Authority, a London borough council, the Common Council of the City of London in its capacity as a local authority, police authority or port health authority, the Council of the Isles of Scilly, an authority established under the Local Government Act 1985 s 10 (waste disposal authorities), a joint authority established by Pt IV (ss 23-42) (fire and rescue services and transport: see PARA 47 et seq), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities), a joint planning board constituted for an area in Wales outside of a National Park by an order under the Town and Country Planning Act 1990 s 2(1B), a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 or a scheme to which s 4 applies, a police authority established under the Police Act 1996 s 3 (see the Local Government Act 2003 s 33(1) (amended by SI 2005/886; the Civil Contingencies Act 2004 s 32(1), Sch 2 para 10(3)(e); the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 101; and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 para 55(3));

22 (22) for the purposes of the Local Government and Public Involvement in Health Act 2007, Pt I, Ch 1 and Pt II, Ch 2, 'local authority' means a county council in England, a district council in England or a London borough council (see ss 23, 30);

- 23 (23) for the purposes of the Local Government and Public Involvement in Health Act 2007 s 212 'local authority' means any body which (a) is a local authority for the purposes of the Local Government Act 2003 s 21 (see s 216) and s 23; and (b) is required to prepare statements of accounts by regulations made under the Audit Commission Act 1998 s 27 or the Public Audit (Wales) Act 2004 s 39 (Local Government and Public Involvement in Health Act 2007 s 212(7));
- 24 (24) for the purposes of the Local Government and Public Involvement in Health Act 2007 ss 221-228 (see **HEALTH SERVICES** vol 54 (2008) PARA 526; and PARA 399), each of the following is a 'local authority':
15. (a) a county council in England (s 229(1)(a));
15
16. (b) a district council in England, other than a council for a district in a county for which there is a county council (s 229(1)(b));
16
17. (c) a London borough council (s 229(1)(c));
17
18. (d) the Common Council of the City of London (s 229(1)(d)); and
18
19. (e) the Council of the Isles of Scilly (s 229(1)(e));
19
- 25 (25) for the purposes of the Local Government and Public Involvement in Health Act 2007, Pt XI, 'local authority' means a county council, a district council, a London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple, a joint waste disposal authority established under the Local Government Act 1985 s 10 (joint arrangements for waste disposal functions), a joint waste authority established under the Local Government and Public Involvement in Health Act 2007 s 205 (see ss 205, 211);
- 26 (26) for the purposes of the Sustainable Communities Act 2007 'local authority' means a county council in England, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly: s 8;
- 27 (27) for the purposes of the Regulatory Enforcement and Sanctions Act 2008 Pt 1 (ss 1-21) or Pt 2 (ss 22-35) references to a local authority in England are to any of the following:
20. (a) a county or district council in England (ss 3(1)(a), 21, 23(2));
20
21. (b) a London borough council (ss 3(1)(b), 21);
21
22. (c) the Common Council of the City of London (ss 3(1)(c), 21, 23(2));
22
23. (d) the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple (ss 3(1)(d), 21, 23(2));
23
24. (e) the Council of the Isles of Scilly (ss 3(1)(d), 21, 23(2));
24
25. (f) a fire and rescue authority in England (not being an authority referred to in heads (a)-(e) above) (ss 3(1)(f), 21, 23(2));
25
26. (g) a port health authority in England (not being an authority referred to in heads (a)-(e)) (ss 3(1)(g), 21, 23(2));
26
27. (h) an authority established under the Local Government Act 1985 s 10 (waste disposal authorities for Greater London and metropolitan counties: see PARA 17) (Regulatory Enforcement and Sanctions Act 2008 ss 3(1)(h), 21, 23(2));
27
- 28 (28) for the purposes of the Regulatory Enforcement and Sanctions Act 2008 Pt 1 (ss 1-21) references to a local authority in Wales are to any of the following:

28. (a) a county or county borough council in Wales (ss 3(2)(a), 21, 23(2));
28
29. (b) a fire and rescue authority in Wales (not being a county or county borough council) (ss 3(2)(b), 21, 23(2));
29
30. (c) a port health authority in Wales (not being a county or county borough council) (ss 3(2)(c), 21, 23(2));
30
- 29 (29) for the purposes of the Regulatory Enforcement and Sanctions Act 2008 Pt 2 (ss 22-35) references to a local authority means a local authority in England, Wales, Scotland or Northern Ireland (ss 23(1), 35).

For the purposes of head (15)(a) a parish council is 'eligible' for the purposes of the Local Government Act 2000 Pt 1 (ss 1-9A) if the council meets the conditions prescribed by the Secretary of State by order for the purposes of s 1: s 1(2) (added by the Local Government and Public Involvement in Health Act 2007 s 77(1), (4)). As to the prescribed conditions see the Parish Councils (Power to Promote Well-being) (Prescribed Conditions) Order 2008, SI 2008/3095.

As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the Council of the Isles of Scilly see PARA 36. As to joint boards see PARA 10. As to Transport for London see **LONDON GOVERNMENT**. As to the London Development Agency see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988. See also **LONDON GOVERNMENT**. As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq. As to the Service Authority for the National Crime Squad see **POLICE** vol 36(1) (2007 Reissue) PARA 430. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45(2010) PARA 68 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 17.

National park authorities are local authorities for certain purposes: see eg the Environment Act 1995 Sch 7 paras 7-13. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) para 526 et seq.

3 Local Government Act 1972 s 270(1); and PARA 24.

4 Local Government Act 1972 s 270(1) (definition amended by the Local Government Act 1985 s 102(1), Sch 16 para 8; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 57).

UPDATE

23 Meaning of 'local authority'

NOTE 2--Heads (1), (3), (4), (7)(a), (e), (9), (10), (13), (21). Definition of 'local authority' further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 paras 3(3), 9, 19, 43, 71, 81, 117. Head (20). Local Government Act 2003 s 23(4), (5) added: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 117.

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(ii) Areas and Authorities in England

A. PRINCIPAL COUNCILS

24. Counties and districts in England.

The Local Government Act 1972 divided England¹ (exclusive of Greater London² and the Isles of Scilly³) into counties, and within those counties into districts⁴. Two types of county and district were created, namely metropolitan and non-metropolitan⁵.

The Local Government Act 1972 required each principal area to have a council⁶, and a 'principal council' is a council elected for a principal area⁷. A 'principal area', in relation to England, is now defined as a non-metropolitan county, a district or a London borough⁸. Metropolitan counties are no longer included in this definition, and metropolitan county councils were abolished by the Local Government Act 1985⁹. The requirement for each area to have a council has been further affected by the power to make structural and boundary changes under the Local Government Act 1992 and the Local Government and Public Involvement in Health Act 2007, paving the way for the introduction of unitary authorities in some areas¹⁰. In those areas the unitary authority performs the functions that would generally be carried out by the county council and the district council.

The Local Government Act 1972 provides that there is to be a council for every non-metropolitan county and for every district, having such functions as are vested in it by the Act or otherwise¹¹. Each council is a body corporate by the name of 'The County Council' or 'The District Council', as the case may be, with the addition of the name of the particular county or district¹². Each council consists of a chairman and councillors¹³, except that, where a council is operating executive arrangements¹⁴ which involve a mayor and cabinet executive¹⁵, the council consists of an elected mayor¹⁶, a chairman and councillors¹⁷.

1 For the purposes of the Local Government Act 1972 s 1, 'England' does not include the former administrative county of Monmouthshire or the former county borough of Newport: s 1(12). See also PARA 37 note 7. As to the meaning of 'England' for the purposes of the Local Government Act 1972 generally see PARA 1 note 1.

2 As to Greater London see PARA 35; and **LONDON GOVERNMENT**.

3 As to the Council of the Isles of Scilly see PARA 36.

4 See the Local Government Act 1972 s 1(1).

5 See the Local Government Act 1972 s 1(2)-(4). 'County', without more, means, in relation to England, a metropolitan county or a non-metropolitan county, but in the expressions 'county council', 'council of a county', 'county councillor' and 'councillor of a county' means, in relation to England, a non-metropolitan county only: s 270(1) (definition amended by the Local Government Act 1985 s 102(1), Sch 16 para 8). 'District', without more, means, in relation to England, a metropolitan district or a non-metropolitan district: Local Government Act 1972 s 270(1). 'Non-metropolitan county' means any county other than a metropolitan county, and 'non-metropolitan district' means any district other than a metropolitan district: s 270(2).

The metropolitan counties are named and their areas described in Sch 1 Pt I; and the non-metropolitan counties are named and their areas described in Sch 1 Pt II. See also the Charlwood and Horley Act 1974; and the Charlwood and Horley (Electoral Division and Wards) Order 1974, SI 1974/772 (revoked). Certain lengths of county boundaries were left to be defined by order of the Secretary of State: see the Local Government Act 1972 s 1(5), Sch 1 Pt III. That definition, together with provisions as to maps and deposit and inspection of them, was made by the Divided Areas (Boundaries) Order 1973, SI 1973/297.

The metropolitan districts were described in the Local Government Act 1972 Sch 1 Pt I, by reference to existing administrative areas, and their names were prescribed by the Secretary of State: see s 1(3); and the Metropolitan Districts (Names) Order 1973, SI 1973/137. The non-metropolitan districts and their areas, and their names, were specified by the Secretary of State: see the Local Government Act 1972 s 1(4), Sch 3 para 1; the English Non-metropolitan Districts (Definition) Order 1972, SI 1972/2039; and the English Non-metropolitan Districts (Names) Order 1973, SI 1973/551.

As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

As to structural and boundary changes see further PARA 55 et seq.

6 See the Local Government Act 1972 s 2 (as originally enacted).

7 See the Local Government Act 1972 s 270(1); and PARA 23.

8 See the Local Government Act 1972 s 270(1) (definition amended by the Local Government Act 1985 Sch 16 para 8); and PARA 23.

9 See the Local Government Act 1985 s 1; and PARA 17.

10 See PARA 54 et seq.

11 See the Local Government Act 1972 s 2(1), (2) (s 2(1) (amended by the Local Government Act 1985 Sch 16 para 2)). As to the general powers and specific functions of a local authority see PARA 579 et seq.

12 Local Government Act 1972 s 2(3). As to the power to change the name of a council see s 74; and PARA 26.

13 See the Local Government Act 1972 s 2(1), (2) (s 2(1) as amended: see note 11). As to chairmen see PARA 144; and as to councillors and members of councils see PARA 126 et seq.

14 As to executive arrangements see PARA 303 et seq.

15 As to the different forms of local authority executive see PARA 327 et seq.

16 As to the elected mayor see PARA 322.

17 Local Government Act 1972 s 2(2A) (added by the Local Government Act 2000 s 46, Sch 3 para 1). In such a case, a reference in the Local Government Act 1972 to a member of a council is a reference to the elected mayor of the council, the chairman of the council or a councillor of the council: s 2(2B) (added by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 3, Sch 18 Pt 3).

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25. Borough status.

A district council may, on a resolution passed by not less than two-thirds of the members voting at a council meeting specially convened for the purpose, petition Her Majesty for the grant of a charter conferring upon the district the status of a borough¹, whereupon Her Majesty, with the advice of the Privy Council², may grant a charter accordingly³. The district council will then bear the name of the council of the borough⁴; and, except where the council is operating executive arrangements⁵ which involve a mayor and cabinet executive⁶, its chairman and vice-chairman will be entitled to the style of 'mayor' and 'deputy mayor' of the borough respectively⁷. However, in any English council which is operating executive arrangements which involve a mayor and cabinet executive, and the chairman or vice-chairman of the council has so previously used the style of mayor or deputy mayor⁸ the chairman or vice chairman may no longer use that style⁹. A council which has obtained borough council status thereby obtains no greater statutory powers than its powers as a district council¹⁰.

1 See the Local Government Act 1972 s 245(1), (2). As to the meaning of 'district' see PARA 24 note 5.

2 As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

3 See the Local Government Act 1972 s 245(1). No such charter could take effect before 1 April 1974: see s 245(3). A council could, however, petition Her Majesty before that date for a charter for the continued use after that date of styles previously used: see s 245(4). The provisions of s 245 have effect subject to any provision made by a grant under the royal prerogative and, in particular, to any such provision granting city or royal borough status or conferring the style of 'lord mayor', 'deputy lord mayor' or 'right honourable': see s 245(10). As to grants of status and title see also PARA 107. As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.

4 Local Government Act 1972 s 245(1)(a).

5 As to executive arrangements see PARA 303 et seq.

6 See the Local Government Act 1972 s 245(1A) (added by the Local Government Act 2000 s 46, Sch 3 para 11). As to the different forms of local authority executive see PARA 327 et seq.

7 Local Government Act 1972 s 245(4)(b). The statutory duties and incidental powers of the mayor and deputy mayor are those of the chairman or vice-chairman; it is the style which is conferred by charter. The precedence granted by s 3(4) to the chairman in the district (see PARA 24) attaches to the office of mayor by virtue of his office as chairman. The style of 'mayor' can only apply in the case of a district council or a London borough. Parishes can adopt the status of 'town' with a town council and town mayor: see s 245(6); and PARA 28.

8 le pursuant to the Local Government Act 1972 s 245(4)(b).

9 Local Government Act 1972 s 245(4A) (added by SI 2002/1057).

10 This is the foundation of the Local Government Act 1972 s 245(1). A district which has the status of a borough or for which the style of borough may be used by virtue of these provisions, and the council of any such district, is not treated as a borough, or the council of a borough, for the purposes of any Act passed before 1 April 1974: s 245(5).

Prior to 1 April 1974 boroughs had vested in them rights, privileges and immunities granted under their charters which were specifically saved by the Local Government Act 1933 s 301 (repealed). However, all local authorities existing in England and Wales (outside London) were abolished on 31 March 1974 and the successor authorities created by the Local Government Act 1972 did not succeed to the charter powers of their predecessors. The London boroughs were created by the London Government Act 1963 s 1, and their charter powers are limited to the matters referred to in that Act: see **LONDON GOVERNMENT**. With the exception of borough or city status and the power to appoint local officers of dignity (see PARAS 107-108), which remain matters for charter grants, the new authorities' powers are all derived from statutes and instruments under statutes.

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26. Change of name.

The council of a county, district or London borough¹ may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, change the name of the county, district or borough². Notice of any such change of name must be sent by the council concerned to the Secretary of State, to the Director General of the Ordnance Survey³ and to the Registrar General⁴, and must be published in such manner as the Secretary of State may direct⁵.

Where the name of a district which has been granted the status of a city, borough or royal borough⁶ or the name of a London borough is changed in pursuance of these provisions, the charter or other grant or incorporation order has effect as if the new name were substituted for the old⁷.

A change of name made in pursuance of these provisions does not affect any rights or obligations of any county, district or London borough or of any council, authority or person, or render defective any legal proceedings; and any legal proceedings may be commenced or continued as if there had been no change of name⁸.

1 As to counties and districts see PARA 24. As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

2 Local Government Act 1972 s 74(1). As to the Secretary of State see PARA 96.

3 As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.

4 As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-606.

5 Local Government Act 1972 s 74(3) (amended by the Local Government and Housing Act 1989 s 160, Sch 8 para 4; and the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 paras 1, 20, Sch 18).

6 See PARAS 25, 107.

7 Local Government Act 1972 s 74(2).

8 Local Government Act 1972 s 74(4) (amended by the Local Government and Housing Act 1989 Sch 8 para 4; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 20, Sch 18).

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B. PARISHES

27. Parishes following the reorganisation of local government.

The parish¹ as a unit of local government² in England differs from the principal authorities in that most parishes continued in being after the reorganisation under the Local Government Act 1972³, and that the basic principles of parish organisation⁴ and powers were not substantially changed⁵.

The Local Government Act 1972 provided for the continuance in being or the establishment of parishes as follows:

- 24 (1) subject to special provision as to certain split parishes⁶, all rural parishes existing immediately before 1 April 1974 continue to exist as parishes⁷;
- 25 (2) in the case of rural parishes split by the reorganisation so that parts are in more than one county⁸ or metropolitan district⁹, specific provision was made listing the split parts and establishing new parishes or allocating parts to other rural parishes¹⁰;
- 26 (3) provision was made to constitute parishes by reference to the boundaries of certain existing boroughs or urban districts¹¹;
- 27 (4) boroughs included in rural districts under previous legislation became parishes on the passing of the Local Government Act 1972 and ceased to be boroughs on 1 April 1974¹².

The statutory functions of parishes are the same whether they are former rural parishes or parishes created by order for certain former boroughs or urban districts¹³.

1 'Parish' is not defined in the Local Government Act 1972. For the purposes of that Act it therefore means one of the parishes continued or established by or as a result of that Act: see heads (1)-(4) in the text. See also PARA 5. As to the reorganisation of parishes see the Local Government and Public Involvement in Health Act 2007 Pt 4 Ch 3 (ss 79-102) and PARAS 68-76.

2 As to ecclesiastical parishes see **ECCLESIASTICAL LAW** vol 14 PARAS 534-590.

3 See head (1) in the text. See also PARA 5.

4 As to parish organisation see PARA 28.

5 Parishes continue to be bodies with powers rather than duties. As to functions of the reorganised local authorities see PARA 579 et seq.

6 le subject to Local Government Act 1972 Sch 1 Pt IV (see the text and note 10), and to any provision corresponding to Sch 1 Pt IV made by order under s 254 (see PARA 6).

7 See Local Government Act 1972 s 1(6).

8 As to the meaning of 'county' see PARA 24 note 5.

9 As to the meaning of 'district' see PARA 24 note 5.

10 See the Local Government Act 1972 s 1(7), Sch 1 Pt IV, which lists the parishes and parts split by new county or metropolitan district boundaries and specifies the future status of each. Similar provision was made by the New Parishes Order 1973, SI 1973/688 (amended by SI 1973/1466), in respect of parishes split by non-metropolitan district boundaries.

11 See the Local Government Act 1972 s 1(8), Sch 1 Pt V; the Local Government (Successor Parishes) Order 1973, SI 1973/1110; the Local Government (Successor Parishes) (No 2) Order 1973, SI 1973/1939; and the Local Government (Successor Parishes) Order 1974, SI 1974/569.

12 See the Local Government Act 1972 s 1(9). These rural boroughs were included in rural districts under the Local Government Act 1933 s 141 (repealed) and the Local Government Act 1958 s 28 (repealed).

13 As to the statutory functions of parishes and their allocation see PARA 579 et seq.

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28. Parish organisation.

For every parish¹ there is a parish meeting for the purpose of discussing parish affairs and exercising any functions conferred on such meetings by any enactment², and there is a parish council for every parish or group of parishes which had a parish council before 1 April 1974³. There is a separate parish council⁴:

- 28 (1) for every parish which immediately before the passing of the Local Government Act 1972 was a borough included in a rural district⁵;
- 29 (2) for every parish which immediately before the passing of that Act was co-extensive with a rural district⁶;
- 30 (3) for every parish established for a split parish⁷;
- 31 (4) for every parish to which part of another parish is added⁸ and which immediately before the passing of the Local Government Act 1972 had no parish council⁹; and
- 32 (5) for every parish established to succeed a former borough or urban district¹⁰.

The council of a parish, not grouped with any other, may resolve that the parish is to have the status of a town¹¹, and thereupon the parish council bears the name of the council of the town¹², the chairman and vice-chairman are entitled respectively to the style of 'town mayor' and 'deputy town mayor'¹³, and the parish meeting has the style of 'town meeting'¹⁴. The resolution ceases to have effect if the parish to which it relates ceases to exist¹⁵ or if the parish adopts an alternative style by virtue of certain provisions¹⁶ whereby it will become known as a 'community', a 'neighbourhood' or a 'village'¹⁷. The council may also resolve to discontinue the status and styles in question¹⁸. At the request of the parish council or, where there is no parish council, at the request of the parish meeting, the council of the district in which the parish is

situated may change the name of the parish¹⁹. Notice of any such change of name must be sent by the district council concerned to the Secretary of State²⁰, to the Director General of the Ordnance Survey²¹ and to the Registrar General²², and must be published by the district council in the parish and elsewhere in such manner as it considers appropriate²³. If an alternative style is adopted, notice must also be given to any district, county or London borough council within whose area the parish lies²⁴. A change of name made in pursuance of these provisions does not affect any rights or obligations of any parish or of any council, authority or person, or render defective any legal proceedings; and any legal proceedings may be commenced or continued as if there had been no change of name²⁵.

Parish councils are subject to reorganisation as a result of community governance reviews²⁶.

1 As to the meaning of 'parish' see PARA 27 note 1.

2 Local Government Act 1972 s 9(1). As to parish meetings see PARA 34.

3 See the Local Government Act 1972 s 9(1). This is subject to the provisions of the Local Government Act 1972 or any instrument made under it: see s 9(1). As to grouping of parishes see PARA 29.

4 This is subject to any order made under the Local Government Act 1972 s 10 (see PARA 30), s 11 (see PARA 29), the Local Government Act 1992 Pt II (ss 12-27) or the Local Government and Public Involvement in Health Act 2007 s 86 (see PARA 69): see the Local Government Act 1972 s 9(4) (amended by the Local Government Act 1992 s 27, Sch 3 para 8; and the Local Government and Public Involvement in Health Act 2007 s 101, Sch 4 para 2(2)). Provision may be made to establish parish councils in parishes where no such council exists: see PARA 30.

5 Local Government Act 1972 s 9(4)(a).

6 Local Government Act 1972 s 9(4)(b). Where a parish was co-extensive with a rural district there was no parish council (unless the county council so ordered), and the rural district council was deemed to be the parish council: see the Local Government Act 1933 s 43(3) (repealed).

7 Local Government Act 1972 s 9(4)(c). The reference in the text is to split parishes listed with specific provision for their status in s 1(7), Sch 1 Pt IV para 1: see PARA 27.

8 See by the Local Government Act 1972 Sch 1 Pt IV para 2, which added parts of existing parishes to other parishes: see PARA 27.

9 Local Government Act 1972 s 9(4)(d).

10 Local Government Act 1972 s 9(4)(e). The reference in the text to parishes is to parishes constituted under s 1(8), Sch 1 Pt V: see PARA 27.

11 See the Local Government Act 1972 s 245(6) (amended by the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 para 51, Sch 18). The provisions of the Local Government Act 1972 s 245 have effect subject to any provision made by a grant under the royal prerogative and, in particular, to any such provision granting city or royal borough status or conferring the style of 'lord mayor', 'deputy lord mayor' or 'right honourable': see s 245(10). As to grants of status and title see also PARA 95. As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.

12 Local Government Act 1972 s 245(6)(a) (as amended: see note 11).

13 Local Government Act 1972 s 245(6)(b) (as amended: see note 11).

14 Local Government Act 1972 s 245(6)(c) (as amended: see note 11).

15 Local Government Act 1972 s 245(7) (amended by the Local Government (Wales) Act 1994 Sch 15 para 51, Sch 18). But if the parish council is dissolved without the parish ceasing to exist, the parish retains its status, the parish meeting continues to be called the town meeting and the parish trustees are called town trustees: see the Local Government Act 1972 s 245(8) (amended by the Local Government (Wales) Act 1994 Sch 15 para 51, Sch 18). As to parish trustees see PARA 34.

16 See the Local Government Act 1972 s 245(7A) (added by the Local Government and Public Involvement in Health Act 2007 Sch 5 para 8). The provisions referred to in the text are an order under the Local

Government Act 1972 s 11 (see PARA 29), a resolution under s 12A (see PARA 31), an order under the Local Government and Public Involvement in Health Act 2007 s 86 (see PARA 69). As to alternative styles see the Local Government Act 1972 ss 12A, 17A and PARA 31.

17 See the Local Government Act 1972 ss 12B, 17A; and PARA 31.

18 See the Local Government Act 1972 s 245(9) (amended by the Local Government (Wales) Act 1994 Sch 15 para 51, Sch 18). If the parish council has been dissolved, the resolution abandoning town status may be passed by the parish meeting: see the Local Government Act 1972 s 245(9) (as so amended). A parish which wishes to abandon an alternative style may do so: see the Local Government Act 1972 s 12A(3); and PARA 31.

19 Local Government Act 1972 s 75(1).

20 As to the Secretary of State see PARA 96.

21 As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.

22 As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-606.

23 Local Government Act 1972 s 75(2).

24 See the Local Government Act 1972 s 12A(5)(e); and PARA 31.

25 Local Government Act 1972 s 75(3).

26 As to community governance reviews see PARA 68 et seq.

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29. Grouping of parishes.

On application by a parish meeting¹, neighbouring parishes² in the same district³ may be grouped⁴ by order of the district council or a London borough council under a common parish council or by adding the parish to an existing group of such parishes under a common parish council⁵, but may not be grouped without the consent of the parish meeting of each of the parishes⁶. A grouping order must make the necessary provision:

- 33 (1) for the name of the group⁷;
- 34 (2) for the electoral arrangements that are to apply to the council⁸;
- 35 (3) for the application to the parishes included in the group of all or any of the provisions relating to parochial charities⁹ and of any of the provisions with respect to the custody of parish documents¹⁰, so as to preserve the separate rights of each parish¹¹; and
- 36 (4) for the dissolution of the separate parish council of any parish included in the group¹².

The order may provide for the consent of the parish meeting of a parish being required to any particular act of the parish council and for any necessary adaptations of the Local Government Act 1972 to the group of parishes or to the parish meetings of the parishes in the group¹³.

The district council or London borough council may by order dissolve a group of parishes or may separate a parish from the group¹⁴. Parishes which are situated in different districts on and after 1 April 1974 and which were grouped under a common parish council before that date continue to be grouped under that council¹⁵ unless the district councils acting jointly by order

dissolve the group¹⁶ or except in so far as a parish is by such an order separated from the group¹⁷.

A community governance review¹⁸ may make recommendations as to whether or not grouping or de-grouping provision should be made¹⁹.

1 Note that one parish meeting may initiate the grouping procedure, and that the district council may not act without an application from a parish meeting. As to parish meetings see PARA 34.

2 As to the meaning of 'parish' see PARA 27 note 1.

3 As to the meaning of 'district' see PARA 24 note 5.

4 'Grouped', in relation to a parish (or community), means grouped by or by virtue of any provision of the Local Government Act 1972 or any previous corresponding enactment under a common parish (or community) council; and 'grouping order' is to be construed accordingly: s 270(1). Provision is made for new groups of parishes created under s 11(1) must use the same alternative style: see s 11A; and PARA 31. Where a parish is not grouped with any other parish, the appropriate parish authority may resolve that the parish will have one of the alternative styles: see s 12A; and PARA 31. The common parish council of a group of parishes may resolve that each of the grouped parishes will have the same alternative style: see s 12B; and PARA 31.

5 See the Local Government Act 1972 s 11(1).

6 See the Local Government Act 1972 s 11(2).

7 See the Local Government Act 1972 s 11(3)(a).

8 See the Local Government Act 1972 s 11(3)(b) (added by the Representation of the People Act 1983 s 206, Sch 8 para 12). 'Electoral arrangements', in relation to a council, means all of the following:

30 (1) the year in which ordinary elections of councillors are to be held (Local Government Act 1972 s 11(3A)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 101, Sch 5 para 4(4)));

31 (2) the number of councillors to be elected to the council by each parish (Local Government Act 1972 s 11(3A)(b) (as so added));

32 (3) the division (or not) of any of the parishes, into wards for the purpose of electing councillors (s 11(3A)(c) (as so added));

33 (4) the number and boundaries of any such wards (s 11(3A)(d) (as so added));

34 (5) the number of councillors to be elected for any such ward (s 11(3A)(e) (as so added));

35 (6) the name of any such ward (s 11(3A)(f) (as so added)).

9 See the Charities Act 1993 s 79: see **CHARITIES** vol 8 (2010) PARA 263.

10 See the Local Government Act 1972 s 226: see PARA 537.

11 See the Local Government Act 1972 s 11(3)(c) (amended by the Charities Act 1993 s 98(1), Sch 6 para 12(2)).

12 See the Local Government Act 1972 s 11(3)(d).

13 Local Government Act 1972 s 11(3).

14 See the Local Government Act 1972 s 11(4). Such an order requires an initiating application by the council of a group of parishes or the parish meeting of any parish included in the group: see s 11(4). It must make such provision as the district council thinks necessary for the election of a parish council for any of the parishes in the group, where it is dissolved, or for any separated parishes: see s 11(4).

15 See the Local Government Act 1972 s 11(5).

16 Local Government Act 1972 s 11(5)(a) (amended by the Local Government Act 1992 s 27, Sch 3 para 9; and the Local Government and Public Involvement in Health Act 2007 s 101, Sch 5 para 4(6)). The reference in

the text is to an order made under the Local Government Act 1972 s 11(4) (see the text and note 14), the Local Government Act 1992 Pt II (ss 12-27) (see PARA 56 et seq) or the Local Government and Public Involvement in Health Act 2007 s 86 (see PARA 69).

17 See the Local Government Act 1972 s 11(5)(b).

18 As to community governance reviews see PARA 68 et seq.

19 See the Local Government and Public Involvement in Health Act 2007 s 91; and PARA 72.

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30. Orders for the dissolution of parish councils.

Where the population of a parish¹ having a separate parish council includes not more than 150 local government electors², the parish meeting may apply to the district council or London borough council for the dissolution of the parish council, and thereupon the district council or London borough council may by order dissolve the parish council³.

Where such an application by a parish meeting is rejected, another such application may not be presented by that meeting within two years from the making of the previous application⁴.

1 As to the meaning of 'parish' see PARA 27 note 1.

2 As to the meaning of 'local government electors' see PARA 127 note 2.

3 Local Government Act 1972 s 10(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 5 para 3).

4 Local Government Act 1972 s 10(2).

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31. Alternative styles.

An order made for the grouping of parishes¹ may make provision that each of the parishes in the group has an alternative style² and is to be known as a 'group of communities'³, a 'group of neighbourhoods'⁴ or a 'group of villages'⁵. Alternatively, the order may make provision for any parish within the group which has an alternative style to cease to have that style⁶. However, the order must make provision in either of these cases:

37 (1) if at least one of the parishes which is to be grouped does not have an alternative style, and at least one of them does have an alternative style⁷;

38 (2) if at least one of the parishes which are to be grouped has an alternative style, and at least one of them has a different alternative style⁸.

An order which adds one or more parishes to an existing group⁹ must make the provision that each added parish which has an alternative style must cease to have an alternative style if the

parishes in the group do not have an alternative style and as least one of the parishes which is to be added has an alternative style¹⁰.

An order which adds one or more parishes to an existing group¹¹ must make the provision that each parish must (if it does not already have the style) have the same alternative style as the parishes already in the group if:

- 39 (a) the parishes in the group have an alternative style¹²; and
- 40 (b) at least one of the parishes which are to be added has an alternative style or does not have any of the alternative styles¹³.

As soon as practicable after the making of an order which includes any of the above provisions, the council which makes the order must give notice of the change in style to the Secretary of State; the Electoral Commission; the Office of National Statistics; the Director General of the Ordnance Survey and any district or county council within whose area the parish lies¹⁴.

If the parishes in a group of parishes have an alternative style and an order¹⁵ dissolves the group or separates one or more parishes from the group then the order must make provision for each de-grouped parish¹⁶ to continue to have the same alternative style¹⁷.

In addition, the common parish council of a group of parishes may resolve that each of the grouped parishes must have the same alternative style¹⁸ and may, in turn, resolve to cease to use that style¹⁹. A single resolution may provide for each of the grouped parishes to cease to have an alternative style and to have the same one of the other alternative styles instead²⁰. As soon as practicable after passing a resolution of this sort, the common parish council of a group must give notice of the change of style to the Secretary of State; the Electoral Commission; the Office of National Statistics; the Director General of the Ordnance Survey and any district or county council within whose area the parish lies²¹.

Where a parish is not grouped with any other parish the following provisions apply²². The appropriate parish authority²³ may resolve that the parish must have one of the alternative styles²⁴ and, if the parish has an alternative style, the appropriate parish authority may resolve that the parish ceases to have that style²⁵. A single resolution may provide for a parish to cease to have an alternative style and to have another of the alternative styles instead²⁶. As soon as practicable after passing such a resolution, the appropriate parish authority must give notice of the change of style to the Secretary of State, the Electoral Commission, the Office of National Statistics, the Director General of the Ordnance Survey and any district council, county council or London borough council within whose area the parish lies²⁷.

A parish ceases to have an alternative style if the parish begins to have the status of a town²⁸ under specified provisions²⁹.

1 le an order under the Local Government Act 1972 s 11(1) (see PARA 29).

2 See the Local Government Act 1972 s 11A(1), (3)(a) (s 11A added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (2)). For the purposes of the Local Government Act 1972 ss 9-16A 'alternative style' means one of the following styles: 'community', 'neighbourhood', 'village': s 17A(1), (2) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (8)). References to a parish having an alternative style, or particular style, are references to the parish having that style by virtue of a relevant order or a resolution under the Local Government Act 1972 s 12A or s 12B: s 17A(3) (as so added). For these purposes 'relevant order' means an order under s 11 (see PARA 29) or the Local Government and Public Involvement in Health Act 2007 s 86 (see PARA 69): Local Government Act 1972 s 17A(7) (as so added). The provisions of a relevant order which provide for a parish to have, or to cease to have, an alternative style are subject to any resolution under s 12A or s 12B relating to that parish: s 17A(4) (as so added). A resolution under s 12A or s 12B relating to a parish is subject to any provisions of a relevant order which provide for a parish to have, or to cease to have, an alternative style: s 17A(5) (as so added).

3 See the Local Government Act 1972 s 11A(9)(a) (as added: see note 2).

- 4 See the Local Government Act 1972 s 11A(9)(b) (as added: see note 2).
- 5 See the Local Government Act 1972 s 11A(9)(c) (as added: see note 2). Any exercise of the provisions made by virtue of s 11A(3)(a):
 - 36 (1) must provide for each of the parishes to have the same alternative style (s 11(4)(a) (as so added));
 - 37 (2) may provide for each of the parishes to have an alternative style which any of them already has (s 11(4)(b) (as so added));
 - 38 (3) has the effect that each parish in the new group ceases to have any different alternative style which it had before the provision was made (s 11(4)(c) (as so added)).
- 6 See the Local Government Act 1972 s 11A(1), (3)(b) (as added: see note 2).
- 7 Local Government Act 1972 s 11A(2)(a) (as added: see note 2). As to the meaning of 'grouped' see PARA 29 note 4.
- 8 Local Government Act 1972 s 11A(2)(b) (as added: see note 2).
- 9 Is an order under the Local Government Act 1972 s 11(1) (see PARA 29).
- 10 Local Government Act 1972 s 11A(5), (6) (as added: see note 2).
- 11 Is an order under the Local Government Act 1972 s 11(1) (see PARA 29).
- 12 Local Government Act 1972 s 11A(7)(a) (as added: see note 2).
- 13 Local Government Act 1972 s 11A(7)(b) (as added: see note 2).
- 14 Local Government Act 1972 s 11A(10) (as added: see note 2).
- 15 Is an order under the Local Government Act 1972 s 11(4) (see PARA 29).
- 16 For these purposes 'de-grouped parish' means:
 - 39 (1) in the case of dissolution of the group, each parish in the group (Local Government Act 1972 s 11B(3)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (2)));
 - 40 (2) in the case of separation of one or more parishes from the group, each parish that is separated (Local Government Act 1972 s 11B(3)(b) (as so added)).
- 17 Local Government Act 1972 s 11B(1), (2) (as added: see note 16).
- 18 See the Local Government Act 1972 s 12B(1), (2) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (3)). If the common parish council passes a resolution under the Local Government Act 1972 s 12B for each of the grouped parish to have an alternative style, the group of parishes must have the appropriate one of the following styles: 'group of communities', 'group of neighbourhoods', 'group of villages' (s 12B(5) (as so added)).
- 19 See the Local Government Act 1972 s 12B(3) (as added: see note 18).
- 20 See the Local Government Act 1972 s 12B(4) (as added: see note 18).
- 21 See the Local Government Act 1972 s 12B(6) (as added: see note 18).
- 22 See the Local Government Act 1972 s 12A(1) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (3)).
- 23 For these purposes 'appropriate parish authority' means the parish council or, if the parish does not have a parish council, the parish meeting: Local Government Act 1972 s 12A(6) (as added: see note 22).
- 24 Local Government Act 1972 s 12A(2) (as added: see note 22).
- 25 Local Government Act 1972 s 12A(3) (as added: see note 22).

- 26 Local Government Act 1972 s 12A(4) (as added: see note 22).
- 27 Local Government Act 1972 s 12A(5) (as added: see note 22).
- 28 ie under the Local Government Act 1972 s 245(6) (see PARA 28).
- 29 Local Government Act 1972 s 17A(6) (as added: see note 2).

UPDATE

31 Alternative styles

TEXT AND NOTES 14, 21, 27--For 'Electoral Commission' read 'Local Government Boundary Commission for England': Local Government Act 1972 ss 11A(10), 12A(5), 12B(6) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 4 para 3). As to the Local Government Boundary Commission for England, see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 60-66.

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32. Orders.

An order made by a district council or by district councils or by a London borough council under the provisions relating to the creation or dissolution of parish councils or to the grouping of parishes¹ may contain such incidental, consequential, transitional or supplementary provision as may appear to the district council or district councils or London borough council to be necessary or proper for the purposes or in consequence of the order or for giving full effect to it². Two copies of every such an order³ must be sent to the Secretary of State⁴.

1 ie under the Local Government Act 1972 s 10 or s 11: see PARAS 29-30.

2 Local Government Act 1972 s 12(1) (amended by the Local Government and Rating Act 1997 s 33, Sch 3 para 8, Sch 4; and the Local Government and Public Involvement in Health Act 2007 s 101, Sch 5 para 5(2)). The order may include provision with respect to the transfer and management or custody of real or personal property, and the transfer of rights and liabilities: see s 12(1) (as so amended). When any such order is made, the Local Government and Public Involvement in Health Act 2007 s 16 (see PARA 65) applies as if the reference in s 16(1) to an order under s 7 or s 10 and the reference in s 16(5)(b) to any order or regulations under Pt 1 Ch 1 were to an order under the Local Government Act 1972 s 10 (see PARA 30) or s 11 (see PARA 29): Local Government Act 1972 s 12(2) (amended by the Local Government Act 1992 s 27, Sch 3 para 10; and the Local Government and Public Involvement in Health Act 2007 s 22 Sch 1 para 11(3)(a)).

3 ie an order under the Local Government Act 1972 s 10 (see PARA 30) or s 11 (see PARA 29).

4 See the Local Government Act 1972 s 12(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 22, Sch 1 para 11(3)(b)). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

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33. Constitution of parish councils.

A parish council is a body corporate¹ consisting of the chairman and not less than five elected parish councillors². It is styled 'The Parish Council' with the addition of the name of the particular parish³. If the parish has the style of community, the council must be known by the name 'The Community Council' with the addition of the name of the community⁴; if the parish has the style of neighbourhood, the council must be known by the name 'The Neighbourhood Council' with the addition of the name of the neighbourhood; and⁵, if the parish has the style of village, the council must be known by the name 'The Village Council' and have the name of the village⁶.

A parish council has all such functions as are vested in it by the Local Government Act 1972 or otherwise⁷. Notwithstanding anything in any rule of law, a parish council need not have a common seal, but where it has no seal any act of the council which is required to be signified by an instrument under seal may be signified by an instrument signed and sealed by two members of the council⁸.

1 Local Government Act 1972 s 14(2).

2 See the Local Government Act 1972 ss 14(1), 16(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 75(1), (5)).

3 See the Local Government Act 1972 s 14(2).

4 Local Government Act 1972 s 14(2A) (s 14(2A)-(2D) added by the Local Government and Public Involvement in Health Act 2007 s 75(5)).

5 Local Government Act 1972 s 14(2B) (as added: see note 4).

6 Local Government Act 1972 s 14(2C) (as added: see note 4). If parishes are grouped under a common parish council the provisions of s 14(2), (2A)-(2C) (as appropriate) apply to that council as they would apply in the case of the council of an individual parish and the names of all the parishes, communities, neighbourhoods or villages in the group are to be included in the name of the common council: s 14(2D) (as so added).

7 Local Government Act 1972 s 14(1). As to specific functions see PARA 579 et seq.

8 Local Government Act 1972 s 14(3).

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34. Parish meetings.

The parish meeting of a parish¹ consists of the local government electors² for the parish³. Any act of a parish meeting may be signified by an instrument signed by the person presiding and two other local government electors present at the meeting⁴. Where there is no separate parish council, the chairman of the parish meeting⁵ (or community meeting, village meeting or neighbourhood meeting, as the case may be)⁶ and the proper officer of the district council⁷ are a body corporate by the name of 'The Parish Trustees' (or Community Trustees, Village Trustees or Neighbourhood Trustees, as the case may be)⁸ with the addition of the name of the parish⁹. The parish trustees must act in accordance with any directions given by the parish meeting¹⁰.

1 As to the meaning of 'parish' see PARA 27 note 1.

- 2 As to meaning of 'local government elector' see PARA 127 note 2.
- 3 Local Government Act 1972 s 13(1). As to the procedure in relation to parish meetings see PARA 635 et seq.
- 4 Local Government Act 1972 s 13(2). If an instrument under seal is required, the act may be signified by an instrument signed by those persons and sealed with the seal of the parish council (in the case of a parish with a separate parish council) or the parish trustees (in any other case), or, if the council or trustees do not have a seal, with the seals of those persons: see s 13(2). As to the seal of a parish council see PARA 33. Notwithstanding anything in any rule of law, the parish trustees need not have a common seal, but, if they do not, any act of theirs which is required to be signified by an instrument under seal may be signified by an instrument signed and sealed by the persons who are the parish trustees: s 13(5).
- 5 As to the chairman of the parish meeting see PARA 146.
- 6 See the Local Government Act 1972 s 13(5A)-(5C) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (4)). As regards parishes which are operating under alternative styles see PARA 31.
- 7 As to the proper officer of the district council see PARA 431. Any reference in the Local Government Act 1972 to a proper officer is, in relation to any purpose and any local authority or other body or any area, to be construed as a reference to the officer appointed for that purpose by that body or for that area, as the case may be: s 270(3).
- 8 See the Local Government Act 1972 s 13(5A)-(5C) (as added: see note 6).
- 9 Local Government Act 1972 s 13(3).
- 10 Local Government Act 1972 s 13(4).

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C. GREATER LONDON

35. Special provision with regard to Greater London.

The local government system for the area of Greater London, which embraces the area of the London boroughs, the City of London, the Inner Temple and the Middle Temple¹, was reorganised on 1 April 1965² under the London Government Act 1963³. The structural reorganisation then effected was maintained in the reorganisation of local government elsewhere in England and Wales by the Local Government Act 1972 on 1 April 1974⁴, subject to certain changes⁵. Under the Local Government Act 1985, the Greater London Council was abolished⁶ and its functions were mainly transferred to London borough councils and the Common Council of the City of London⁷. The Greater London Authority Act 1999 established the Greater London Authority, and introduced the Mayor of London and the London Assembly⁸.

The provisions of the local government legislation apply to the authorities in Greater London either in like manner as elsewhere or with modifications to meet the circumstances of local government in London⁹. The special features of local government applicable to Greater London are discussed elsewhere in this work¹⁰.

1 See the London Government Act 1963 s 2(1); and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

2 As from this date the former counties of London and Middlesex, the former metropolitan boroughs and any county borough, county district or parish the area of which fell wholly within Greater London ceased to exist: see the London Government Act 1963 s 3(1)(b) (repealed). Further, from that date, no part of Greater London was to form part of any administrative county, county district or parish: see s 3(1)(a) (repealed). The division of

England and Wales on 1 April 1974 into counties and districts effected by the Local Government Act 1972 was expressed to be exclusive of Greater London: see s 1(1); and PARA 24.

3 See the London Government Act 1963, which established 32 London borough councils (see s 1(1), Sch 1 Pt I) and the Greater London Council (see s 2(2) (repealed)), whilst maintaining in existence the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple. See further **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 24, 30. Each London borough council has received a charter of incorporation as a borough under s 1(2): see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 30.

4 See PARA 5. The structural reorganisation under the Local Government Act 1972 was exclusive of Greater London: see s 1(1); note 2; and PARA 24.

5 See the Local Government Act 1972 s 8, Sch 2; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 35-38.

6 See the Local Government Act 1985 s 1; and PARA 17.

7 See the Local Government Act 1985 Pt II (ss 2-17); and PARA 17.

8 See the Greater London Authority Act 1999; and **LONDON GOVERNMENT**.

9 Local government legislation applies to the authorities in Greater London subject to certain modifications, exceptions and additions which are noted in this title in so far as they are contained in general provisions, but some of which are considered in greater detail in **LONDON GOVERNMENT**. In particular it should be noted that the definition of 'local authority' may not include the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple: see PARA 23.

10 See **LONDON GOVERNMENT**.

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D. THE ISLES OF SCILLY

36. Local government in the Isles of Scilly.

The Isles of Scilly¹ are administered for local government purposes by a council known as the Council of the Isles of Scilly² and constituted in accordance with an order made by the Secretary of State³. The council consists of a chairman and councillors⁴. The Isles of Scilly are divided into five parishes⁵, although there are no parish councils or parish meetings⁶.

Certain provisions of the Local Government Act 1972⁷ apply to the Council of the Isles of Scilly as if it were a county council⁸. The Council of the Isles of Scilly is a billing authority for rating and council tax purposes⁹, and provision is made for the keeping by the council of a general fund¹⁰, and for the division of expenditure between general and parochial expenses¹¹. The Council of the Isles of Scilly receives revenue support grants from central government¹².

Provision has been made for the Council of the Isles of Scilly to exercise and perform specified local government functions¹³, some of which are functions elsewhere in England of non-metropolitan county councils¹⁴ and some of which are functions elsewhere in England of district councils¹⁵. The Council of the Isles of Scilly has functions, for example, relating to social services¹⁶ and town and country planning¹⁷. Specific provision has also been made for the application of the Local Government Act 2003 to the Isles of Scilly¹⁸.

1 The Isles of Scilly are defined by reference to a map, copies of which are deposited at the offices of the Secretary of State, the Duchy of Cornwall and the Council of the Isles of Scilly: Isles of Scilly Order 1978, SI 1978/1844, art 2(1) (definition amended by virtue of SI 1997/2971). The copy deposited with the council is open to inspection by ratepayers, and on payment of a fee a ratepayer is entitled to a certified copy or extract which

is prima facie evidence of the extent of any parish: see the Isles of Scilly Order 1978, SI 1978/1844, art 3(2). As to the Secretary of State see PARA 96.

The division of England and Wales into new counties from 1 April 1974 was declared to be exclusive of the Isles of Scilly (see the Local Government Act 1972 s 1(1); and PARA 5). The Isles of Scilly do not generally form part of the county of Cornwall. However, for the purposes of ss 216, 219 (see PARA 115; and **SHERIFFS**), the Isles of Scilly are deemed to be part of the county of Cornwall: s 216(2) (amended by the Justices of the Peace Act 1979 s 71, Sch 3). As to contribution by the Isles of Scilly to Cornwall county council see note 3.

The provisions relating to changes in local government areas (ie the provisions of the Local Government Act 1972 Pt IV (ss 53-78): see PARA 77 et seq) do not generally apply to the Isles of Scilly: see the Isles of Scilly Order 1978, SI 1978/1844, art 7(1). However, the provisions relating to accretions from the sea etc (ie the Local Government Act 1972 s 72: see PARA 89) do apply to the Isles of Scilly: see the Isles of Scilly Order 1978, SI 1978/1844, art 7(2).

2 See the Local Government Act 1972 s 265(1); and the Isles of Scilly Order 1978, SI 1978/1844, art 4(2).

3 See the Isles of Scilly Order 1978, SI 1978/1844, which came into operation on 1 February 1979 (see art 1). The order was made under the Local Government Act 1972 s 265, which authorised the Secretary of State to make an order for the council's constitution and otherwise for regulating the application of the Act to the Isles of Scilly, and, further, authorised the making of an order, on the council's application, providing for the exercise of any functions for the time being conferred or imposed on local authorities: see s 265(2). An order under s 265 may apply any public general Act relating to local government to the Isles of Scilly (see s 265(3)(a)) and provide for all matters which appear to the Secretary of State necessary or proper for carrying the order into effect (see s 265(3)(c)). An order may also provide for the contribution by the Isles of Scilly to Cornwall county council in respect of costs incurred by the county council on matters specified in the order as benefiting the Isles of Scilly: see s 265(3)(b); and the Isles of Scilly Order 1978, SI 1978/1844, arts 13, 14, 15 (art 15 amended by the Criminal Justice Act 1982 s 65(1)) (prosecution expenses, magistrates' court expenses, and probation and after-care expenses).

The council had been constituted under the Local Government Act 1933 s 292 (repealed), and was continued in being by the Local Government Act 1972 s 265(1). Transitional provisions provided that any order in force under the Local Government Act 1933 s 292 (repealed) was to have effect as if made under the Local Government Act 1972 s 265, and could be varied or revoked accordingly: see s 265(4).

The provisions of the Local Government Act 2000 s 21(1), (2)(f), (6), (7), (10) apply to the Isles of Scilly: see the Isles of Scilly (Functions) (Review and Scrutiny of Health Services) Order 2004, SI 2004/1412.

4 Isles of Scilly Order 1978, SI 1978/1844, art 3(2). The 25 councillors are elected by the local government electors for the Isles of Scilly, a specified number being elected for each parish: see art 4(3). The ordinary elections of councillors take place every fourth year after 1981: see art 5(1). Councillors hold office for a term of four years and on the fourth day after the ordinary day of election the councillors retire together and their successors come into office: see art 5(1). Elections are to be conducted as if they were elections of county councillors: see art 5(2). As to elections of county councillors see PARA 126.

5 See the Isles of Scilly Order 1978, SI 1978/1844, art 3(1). The parishes (and the number of councillors elected for each) are Bryher (2), St Agnes (2), St Martin's (2), St Mary's (16) and Tresco (3): see arts 3(1), 4(3).

Special provision is made for the custody of, and access to, parish documents: see art 11 (amended by virtue of SI 1997/2971).

6 Subject to the express provisions of the Isles of Scilly Order 1978, SI 1978/1844, in relation to parishes, none of the provisions of the Local Government Act 1972 in relation to parishes applies to the parishes in the Isles of Scilly: see the Isles of Scilly Order 1978, SI 1978/1844, art 6(3).

7 The Local Government Act 1972 s 3 (see PARA 144), s 4 (see PARA 144), s 5 (see PARA 144), s 83 (see PARA 143), s 89 (see PARA 140), s 94(5) (see PARA 288), s 120 (see PARA 509), s 121 (see PARA 510), s 122 (see PARA 513), s 123 (see PARA 515), s 132 (see PARA 621), s 138 (see PARA 490), s 141 (see PARA 542), s 249(1), (2), (4) (see PARA 111), Sch 12 Pt I (paras 1-6) (see PARA 628-630), Sch 13 paras 1(a), 14 (repealed): see the Isles of Scilly Order 1978, SI 1978/1844, art 6(2).

Certain provisions of the Local Government Act 1972 are modified in their application to the Isles of Scilly: see the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule (amended by the Coroners Act 1988 s 36(2), Sch 4).

8 Isles of Scilly Order 1978, SI 1978/1844, art 6(2). In the application of the Local Government Act 1972 to the Isles of Scilly, 'local authority' includes the Council of the Isles of Scilly; and 'local government area' includes the Isles: Isles of Scilly Order 1978, SI 1978/1844, art 6(1).

9 See the Isles of Scilly Order 1978, SI 1978/1844, art 10. See further **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 5, 229.

10 See the Isles of Scilly Order 1978, SI 1978/1844, art 9(1). The council's receipts must be carried to this fund and its liabilities discharged out of it: see art 9(2). As to the keeping of accounts see art 9(3), (4) (art 9(4) added by SI 1991/1730).

11 See the Isles of Scilly Order 1978, SI 1978/1844, art 8; and the Isles of Scilly (Functions) Order 1979, SI 1979/72, art 4.

12 As to revenue support grants see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 531 et seq.

13 See the Isles of Scilly (Functions) Order 1979, SI 1979/72 (amended by SI 1990/2486 and SI 2005/1082); the Isles of Scilly (Functions) Order 1982, SI 1982/701; the Isles of Scilly (Functions) (No 2) Order 1982, SI 1982/1659; and the Isles of Scilly (Functions) Order 1991, SI 1991/205. See also the Isles of Scilly Order 1978, SI 1978/1844, art 12. For the purposes of certain Acts, 'local authority' is defined so as to include the Council of the Isles of Scilly, so that the Council of the Isles of Scilly has the functions of a local authority under those Acts. As to the meaning of 'local authority' see PARA 23. As to the application of the Local Authorities (Land) Act 1963 (see PARA 615) to the Isles of Scilly see s 11; and the Isles of Scilly (Land) Order 1970, SI 1970/957.

14 See note 13. As to non-metropolitan county councils see PARA 24.

15 See note 13. As to district councils see PARA 24.

16 See the Local Authority Social Services Act 1970 s 12(1); the Isles of Scilly (Local Authority Social Services) Order 1980, SI 1980/328; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1005.

17 See the Town and Country Planning Act 1990 s 319; the Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 2, 28.

18 See the Local Government Act 2003 s 125.

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(iii) Areas and Authorities in Wales

A. PRINCIPAL COUNCILS

37. Counties and county boroughs in Wales.

For the administration of local government in Wales¹ on and after 1 April 1996², the local government areas³ are:

- 41 (1) the new⁴ principal areas⁵; and
- 42 (2) the communities⁶.

In relation to Wales, 'principal area' means a county or county borough⁷. For every principal area in Wales there is a council⁸, and a 'principal council' is a council elected for a principal area⁹. The council is a body corporate and has the functions given to it by the Local Government Act 1972 or otherwise¹⁰. Each council for a county in Wales has the name of the county with the addition, in the case of its English name, of the words 'County Council' or the word 'Council' and, in the case of its Welsh name, of the word 'Cyngor'¹¹. Each council for a county borough in Wales has the name of the county borough with the addition, in the case of its English name, of the words 'County Borough Council' or the word 'Council' and, in the case of its Welsh name, of the words 'Cyngor Bwrdeistref Sirol' or the word 'Cyngor'¹². Each council consists of a chairman and councillors¹³, except that, where a council is operating executive

arrangements¹⁴ which involve a mayor and cabinet executive or a mayor and council manager executive¹⁵, the council consists of an elected mayor¹⁶, a chairman and councillors¹⁷.

1 The Local Government Act 1972 Pt II (ss 20-38) extends to Wales only: s 38. As to the meaning of 'Wales' see PARA 1 note 1.

2 As to the reorganisation of local government in Wales under the Local Government (Wales) Act 1994 see PARA 18.

3 As to the meaning of 'local government area' see PARA 22.

4 As to the meaning of 'new' see PARA 10 note 7.

5 Local Government Act 1972 s 20(1)(a) (s 20 substituted by the Local Government (Wales) Act 1994 s 1(1)).

6 Local Government Act 1972 s 20(1)(b) (as substituted: see note 5). As to the communities see PARA 41 et seq.

7 Local Government Act 1972 s 20(5) (as substituted: see note 5). See also s 270(1) (definition amended by the Local Government (Wales) Act 1994 s 1(8)); and PARA 23. The new principal areas and their names (in English and Welsh) are set out in Sch 4: see the Local Government Act 1972 s 20(2), (3), (11) (as so substituted).

The counties which were created by the Local Government Act 1972 (as originally enacted) (see PARA 5 et seq) as counties in Wales, and the districts within them, ceased to exist on 1 April 1996 (see PARA 18), except that the preserved counties continue in existence (with, in some cases, modified boundaries) for certain purposes: s 20(6) (as so substituted). The Welsh Ministers may by order change the name by which any of the preserved counties is for the time being known: s 20(9) (as so substituted). At the date at which this volume states the law no such order had been made. As to the Welsh Ministers see PARA 97.

For the new principal areas which are counties, those which are county boroughs, and the areas of the preserved counties see s 20(4), (8), Sch 4 Pts I, II, III (s 20(4), (8) as so substituted; and Sch 4 substituted by the Local Government (Wales) Act 1994 s 1(2), Sch 1).

8 Local Government Act 1972 s 21(1) (s 21 substituted by the Local Government (Wales) Act 1994 s 2). The councils of the counties and districts mentioned in the Local Government Act 1972 s 20(6) (see note 7) ceased to exist on 1 April 1996: see s 20(7) (as substituted: see note 5).

9 See the Local Government Act 1972 s 270(1); and PARA 24.

10 Local Government Act 1972 s 21(2) (as substituted: see note 8). As to the general powers and specific functions of a local authority see PARA 579 et seq.

11 Local Government Act 1972 s 21(3) (as substituted: see note 8). In certain cases, this provision has effect as if it required the addition of the words 'Cyngor Sir' to the Welsh name: see s 21(5) (as so substituted). As to the use of the Welsh language see the Welsh Language Act 1993; PARA 605; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44; **STATUTES** vol 44(1) (Reissue) PARA 1368.

12 Local Government Act 1972 s 21(4) (as substituted: see note 8).

13 See the Local Government Act 1972 s 21(1) (as substituted: see note 8). As to chairmen see PARA 144; and as to councillors and members of councils see PARA 147 et seq.

14 As to executive arrangements see PARA 303 et seq.

15 As to the different forms of local authority executive see PARA 327 et seq.

16 As to the elected mayor see PARA 322.

17 See the Local Government Act 1972 s 21(1A) (s 21 as substituted (see note 8); s 21(1A) added by Local Government Act 2000 s 46, Sch 3 para 4). In such a case, a reference in the Local Government Act 1972 to a member of a council is a reference to the elected mayor of the council, the chairman of the council or a councillor of the council: Local Government Act 1972 s 21(1B) (added by the Local Government and Public Involvement in Health Act 2007 s 74(1), Sch 3 para 4).

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38. County borough status.

A county council in Wales¹ may, on a resolution passed by not less than two-thirds of the members voting at a council meeting specially convened for the purpose, petition Her Majesty for the grant of a charter conferring upon the county the status of a county borough², whereupon Her Majesty, with the advice of the Privy Council³, may grant a charter accordingly⁴. Although a county borough which has acquired that status by such a charter is a county borough⁵, it thereby obtains no greater statutory powers⁶.

1 As to the meaning of 'Wales' see PARA 1 note 1.

2 See the Local Government Act 1972 s 245A(1), (2) (s 245A added by the Local Government and Housing Act 1989 s 160, Sch 8 para 6; and substituted by the Local Government (Wales) Act 1994 s 5).

3 As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

4 See the Local Government Act 1972 s 245A(1) (as added and substituted: see note 2). No such charter could take effect before 1 April 1996: see s 245A(3) (as so added and substituted). The provisions of s 245A have effect subject to any provision made by a grant under the royal prerogative and, in particular, to any such provision granting the status of a royal borough or conferring any style on any person: s 245A(5) (as so added and substituted). As to these grants of status and title see PARA 107. As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.

5 See the Local Government Act 1972 s 245A(4)(a) (as added and substituted: see note 2).

6 See the Local Government Act 1972 s 245A(4)(b) (as added and substituted: see note 2). A county borough which has acquired that status by a charter under these provisions is not to be treated as a borough for the purposes of any Act passed before 1 April 1974: see s 245A(4)(b) (as so added and substituted). See further PARAS 25 note 8, 107-108.

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39. Change of name.

The council of a county or county borough¹ may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, change the name of the county or county borough². Notice of any change of name made under these provisions must be sent by the council concerned to the National Assembly for Wales, to the Director General of the Ordnance Survey³ and to the Registrar General⁴, and must be published in such manner as the National Assembly for Wales may direct⁵. If the name of a Welsh principal area⁶ is changed under these provisions, and there are generally accepted alternative English and Welsh forms of that name, or alternative English and Welsh names, both forms of the new name or (as the case may be) both names must be published⁷.

Where a Welsh principal area which has, by charter or other grant or incorporation order, been granted the status of a county borough, city or royal borough⁸ subsequently changes the name of the council in pursuance of these provisions, the charter or other grant or incorporation order has effect as if the new name were substituted for the old⁹.

A change of name made in pursuance of these provisions does not affect any rights or obligations of any county or county borough or of any council, authority or person, or render defective any legal proceedings; and any legal proceedings may be commenced or continued as if there had been no change of name¹⁰.

- 1 As to counties and county boroughs see PARA 37.
- 2 Local Government Act 1972 s 74(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 20).
- 3 As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.
- 4 As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-606.
- 5 Local Government Act 1972 s 74(3) (amended by the Local Government and Housing Act 1989 s 160, Sch 8 para 4; and the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 20, Sch 18).
- 6 As to the meaning of 'principal area' see PARA 23.
- 7 Local Government Act 1972 s 74(7) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 20).
- 8 See PARAS 43, 95.
- 9 Local Government Act 1972 s 74(2A) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 20).
- 10 Local Government Act 1972 s 74(4) (amended by the Local Government and Housing Act 1989 Sch 8 para 4; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 20, Sch 18).

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40. Consultation with community councils.

Where a principal council¹ is to consider any proposal which relates to a designated matter², the council must:

- 43 (1) afford the relevant community councils³ an opportunity to make representations to it about the proposal⁴;
- 44 (2) before making any decision in relation to the proposal, take into account any representations made to it by any relevant community council with respect to the proposal⁵; and
- 45 (3) when it takes a decision with respect to the proposal, notify without delay any relevant community council by whom any such representations have been made⁶.

If a community council has given written notice to the relevant principal council⁷ that it wishes to be consulted about a specified proposal which is to be considered by the principal council and which relates to a designated matter, or that it wishes to be consulted about any proposal which is to be considered by the principal council and which relates to such a matter, then the principal council must take the steps mentioned in heads (1) to (3) above in relation to that community council⁸.

A contravention of the duty imposed by these provisions does not affect the validity of any decision of a principal council or of anything done in pursuance of any such decision⁹.

1 As to the meaning of 'principal council' see PARA 23.

2 The Welsh Ministers may by order designate any matter for the purposes of the Local Government Act 1972 s 33A(2) or s 33A(3): s 33A(1) (s 33A added by the Local Government (Wales) Act 1994 s 14). As to the Welsh Ministers see PARA 97.

An order under the Local Government Act 1972 s 33A may:

- 41 (1) prescribe circumstances (including, in particular, the need to act with urgency) in which s 33A(2) and s 33A(3) do not apply (s 33A(4)(a) (as so added));
- 42 (2) give the Welsh Ministers power, in such circumstances as may be prescribed by the order, to provide that in relation to any principal council specified by the Welsh Ministers s 33A(2) and s 33A(3) are not to apply or are to apply only to the extent specified by the National Assembly for Wales (s 33A(4)(b) (as so added)).

The power to make an order under s 33A includes power:

- 43 (a) to make such incidental, consequential, transitional or supplemental provision as the Welsh Ministers thinks necessary or expedient (s 33A(7)(a) (as so added)); and
- 44 (b) to make different provision for different areas, including different provision for different localities and for different authorities (s 33A(7)(b) (as so added)).

At the date at which this volume states the law no such order had been made.

3 For these purposes, 'relevant community council', in relation to a principal council, means the council of any community which is, or group of communities which are, within the area of the principal council: Local Government Act 1972 s 33A(6) (as added: see note 2). As to communities see PARA 41 et seq.

4 Local Government Act 1972 s 33A(2)(a) (as added: see note 2).

5 Local Government Act 1972 s 33A(2)(b) (as added: see note 2).

6 Local Government Act 1972 s 33A(2)(c) (as added: see note 2).

7 For these purposes, 'relevant principal council', in relation to any community council, means the principal council within whose area the community is, or group of communities are, situated: Local Government Act 1972 s 33A(6) (as added: see note 2).

8 Local Government Act 1972 s 33A(3) (as added: see note 2).

9 Local Government Act 1972 s 33A(5) (as added: see note 2).

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B. COMMUNITIES

41. Communities following the reorganisation of local government.

The reorganisation of local government in Wales¹ under the Local Government Act 1972² established a system of communities, representing in Wales substantially the same system as that of parishes in England³.

The Local Government (Wales) Act 1994, under which local government in Wales was further reorganised⁴, provided that the community councils in existence on 1 April 1996 were to continue in existence after that date⁵. Where the name of a community was given only in its English form or only in its Welsh form, but there was a generally accepted alternative form of that name, or alternative name, in Welsh or (as the case may be) in English⁶, then the principal council⁷ within whose area the community lay had to take such steps as were prescribed with a view to securing that there was both an English and a Welsh name for the community⁸.

At the request of the community council or, where there is no community council, at the request of a community meeting⁹, the council of the principal area¹⁰ in which the community is situated may change the name of the community¹¹. Notice of any such change of name must be sent by the principal council concerned to the Welsh Ministers¹², to the Director General of the Ordnance Survey¹³ and to the Registrar General¹⁴, and must be published by the principal council in the community and elsewhere in such manner as it considers appropriate¹⁵. If the name of any community is changed under these provisions, and there are generally accepted alternative English and Welsh forms of that name, or alternative English and Welsh names, both forms of the new name or (as the case may be) both names must be published¹⁶. A change of name made in pursuance of these provisions does not affect any rights or obligations of any community or of any council, authority or person, or render defective any legal proceedings; and any legal proceedings may be commenced or continued as if there had been no change of name¹⁷.

The council of a community which is not grouped with any other community¹⁸ may resolve that the community is to have the status of a town¹⁹, and thereupon:

- 46 (1) the town council has the name of the community with the addition, in English, of the words 'Town Council' and, in Welsh, of the words 'Cyngor Tref'²⁰;
- 47 (2) the chairman of the town council is entitled to the style of 'town mayor' or 'maer y dref'²¹, and the vice-chairman of the town council is entitled to the style of 'deputy town mayor' or 'dirprwy faer y dref'²².

Any such resolution ceases to have effect if the community to which it relates ceases to exist²³. A community council by whom a resolution has been passed may resolve that the resolution is to cease to have effect²⁴, and the community then ceases to have the status of a town²⁵.

1 As to the meaning of 'Wales' see PARA 1 note 1.

2 Under the Local Government Act 1972 reorganisation, every district in Wales consisted of one or more areas known as communities, and for this purpose each pre-reorganisation borough, urban district and rural parish became a community on 1 April 1974 having the name of the former borough, urban district or parish: see s 20(4), Sch 4 Pt III (as originally enacted). As to the reorganisation of local government under the Local Government Act 1972 see also PARA 5.

3 As to parishes in England see PARA 27 et seq.

4 As to the reorganisation of local government under the Local Government (Wales) Act 1994 see also PARA 18.

5 Local Government Act 1972 s 27(2) (s 27 substituted by the Local Government (Wales) Act 1994 s 8).

6 Local Government Act 1972 s 27(3) (as substituted: see note 5).

7 As to the meaning of 'principal council' see PARA 23.

8 Local Government Act 1972 s 27(4) (as substituted: see note 5). The principal council had to take the prescribed steps referred to in the text before 1 October 1997: see s 27(4) (as so substituted). As to the prescribed steps see the Local Government (Wales) (Alternative Community Names) (Prescribed Steps) Regulations 1996, SI 1996/179.

- 9 As to community meetings see PARA 46.
- 10 As to the meaning of 'principal area' see PARA 23.
- 11 Local Government Act 1972 s 76(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 21).
- 12 As to the Welsh Ministers see PARA 97.
- 13 As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.
- 14 As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-606.
- 15 Local Government Act 1972 s 76(2) (amended by the Local Government and Housing Act 1989 s 160, Sch 8 para 5; and the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 21, Sch 18).
- 16 Local Government Act 1972 s 76(4) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 21).
- 17 Local Government Act 1972 s 76(3) (amended by the Local Government and Housing Act 1989 Sch 8 para 5; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 21, Sch 18).
- 18 As to grouping of communities see PARA 43.
- 19 Local Government Act 1972 s 245B(1) (s 245B added by the Local Government (Wales) Act 1994 s 16). Where the provisions of the Local Government Act 1972 s 27(4) apply in relation to a community, the council of that community may not pass a resolution under s 245B(1) unless it is satisfied that those provisions have been complied with in relation to the community: s 245B(3) (as so added).
Section 245B has effect subject to any provision made by a grant under the royal prerogative and, in particular, to any provision conferring any style on any person: s 245B(8) (as so added). As to grants of status and title see also PARA 107. As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.
- 20 Local Government Act 1972 s 245B(2)(a) (as added: see note 19).
- 21 Local Government Act 1972 s 245B(2)(b) (as added: see note 19).
- 22 Local Government Act 1972 s 245B(2)(c) (as added: see note 19).
- 23 Local Government Act 1972 s 245B(4) (as added: see note 19). If a community council which has passed such a resolution is dissolved without the community ceasing to exist, the dissolution does not affect the status of the community: s 245B(5) (as so added).
- 24 Local Government Act 1972 s 245B(6) (as added: see note 19). If the community council has been dissolved, the resolution abandoning town status may be passed by the community meeting of the community: see s 245B(6) (as so added).
- 25 See the Local Government Act 1972 s 245B(7) (as added: see note 19).

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42. Orders for the creation or dissolution of community councils.

A community meeting¹ of a community which does not have a separate council may apply to the principal council² within whose area it lies for an order establishing a council for the community³.

A community meeting of a community which has a separate community council may apply to the principal council within whose area it lies for an order dissolving the community council⁴.

An application under these provisions may generally be made at any time⁵.

If, on any application under these provisions, the principal council is satisfied that the relevant requirements⁶ have been complied with, it must make the order applied for⁷.

1 As to community meetings see PARA 46.

2 As to the meaning of 'principal council' see PARA 23.

3 Local Government Act 1972 s 28(1) (s 28 substituted by the Local Government (Wales) Act 1994 s 9). The Local Government Act 1972 s 28 is subject to s 29B (see PARA 44): s 28(8) (as so substituted). An order establishing a separate community council for a community must make such provision as appears to the council making it to be necessary for the election of a community council in accordance with the Local Government Act 1972 and the Representation of the People Act 1983 Pt I (ss 1-66A) (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 28(4) (as so substituted). As to local authority elections see PARAS 115-116; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

No order may be made establishing a separate community council for a community grouped under a common community council unless by that order or an order under s 29A (see PARA 43) the community is separated from the group or the group is dissolved: s 28(5) (as so substituted). Where, in a case to which s 28(5) applies, the group is not dissolved, the order under s 28 must make such provision as appears to the principal council making it to be necessary for the alteration of the group's community council: s 28(6) (as so substituted). As to grouping of communities, and the dissolution of groups of communities, see PARA 43.

4 Local Government Act 1972 s 28(2) (as substituted: see note 3).

5 Local Government Act 1972 s 28(7) (as substituted: see note 3). This is subject to the provisions of s 30: see PARA 44.

6 Ie the relevant requirements of the Local Government Act 1972 s 29B (see PARA 44) and of s 99, Sch 12 (see PARA 619 et seq).

7 Local Government Act 1972 s 28(3).

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43. Grouping of communities.

A community meeting¹ of a community may apply to the principal council² within whose area the community is situated³:

- 48 (1) for an order grouping the community with some neighbouring community or communities which lie in the same principal area as the applicant, under a common community council⁴;
- 49 (2) for an order adding the community to a group of communities which are all in the area of the same principal council as the community, and for which there is a common community council⁵.

Such an application may generally be made at any time⁶. If, on any application under these provisions, the principal council is satisfied that the relevant requirements⁷ have been complied with⁸ and, in the case of an application under head (2) above, that a community meeting of each of the communities in the group has consented to the applicant becoming a member of the group⁹, then the principal council must make the order applied for¹⁰.

The council of a group of communities may apply to the principal council within whose area the communities lie for an order dissolving the group¹¹, and a community meeting of a community included in a group of communities may apply to the principal council within whose area the community lies for an order separating the community from the group¹². An application under these provisions may generally be made at any time¹³. If, on any application under these provisions, the principal council is satisfied that the relevant requirements¹⁴ have been complied with¹⁵ and, in the case of an application by a council of a group of communities for an order dissolving the group, that a community meeting of each of the communities in the group has consented to the dissolution of the community council¹⁶, then the principal council must make the order applied for¹⁷.

1 As to community meetings see PARA 46.

2 As to the meaning of 'principal council' see PARA 23.

3 Local Government Act 1972 s 29(1) (s 29 substituted by the Local Government (Wales) Act 1994 s 10). The Local Government Act 1972 s 29 is subject to s 29B (see PARA 44): s 29(8) (as so substituted).

4 Local Government Act 1972 s 29(1)(a) (as substituted: see note 3).

5 Local Government Act 1972 s 29(1)(b) (as substituted: see note 3).

6 Local Government Act 1972 s 29(3) (as substituted: see note 3). This is subject to the provisions of s 30: see PARA 44.

7 I.e. the relevant requirements of Local Government Act 1972 s 29B (see PARA 44) and of s 99, Sch 12 (see PARA 619 et seq).

8 Local Government Act 1972 s 29(2)(a) (as substituted: see note 3).

9 Local Government Act 1972 s 29(2)(b) (as substituted: see note 3).

10 Local Government Act 1972 s 29(2) (as substituted: see note 3). Such an order must provide for the name of the group in both an English and a Welsh form: s 29(4) (as so substituted). An order under s 29 must:

45 (1) make such provision as appears to the council making it to be necessary for the election, in accordance with the Local Government Act 1972 and the Representation of the People Act 1983 Pt I (ss 1-66A) (see **ELECTIONS AND REFERENDUMS**), of separate representatives on the community council for each community or for the wards of any community or, in the case of an order which adds a community to a group, for that community or for the wards of that community (see the Local Government Act 1972 s 29(5)(a) (as so substituted));

46 (2) provide for the dissolution of the separate community council of any community included in the group (see s 29(5)(b) (as so substituted));

47 (3) make such provision as appears to the council making it to be necessary for the application to the communities included in the group of all or any of the provisions of the Charities Act 1993 s 79 (see **CHARITIES** vol 8 (2010) PARAS 263-265) and of any of the provisions of the Local Government Act 1972 with respect to the custody of community documents (see PARA 537), so as to preserve the separate rights of each community (see s 29(6) (as so substituted)).

An order under s 29 may provide for any necessary adaptations of the Local Government Act 1972 in relation to the group of communities: s 29(7) (as so substituted).

11 Local Government Act 1972 s 29A(1) (s 29A added by the Local Government (Wales) Act 1994 s 11). The Local Government Act 1972 s 29A is subject to s 29B (see PARA 44): s 29A(7) (as so added).

Where a community council is dissolved by an order under s 29A, the order must make such provision as appears to the principal council to be necessary for the election of a community council for any of the communities in the group in accordance with the Local Government Act 1972 and the Representation of the People Act 1983 Pt I (ss 1-66A) (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 29A(4) (as so added).

12 Local Government Act 1972 s 29A(2) (as added: see note 11).

Where a community is separated from a group by an order under s 29A, the order must make such provision as appears to the principal council to be necessary for the election of a community council for the community in accordance with the Local Government Act 1972 and the Representation of the People Act 1983 Pt I (ss 1-66A) (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 29A(5) (as so added).

13 Local Government Act 1972 s 29A(6) (as added: see note 11). This is subject to the provisions of s 30: see PARA 44.

14 le the relevant requirements of the Local Government Act 1972 s 29B (see PARA 44) and of s 99, Sch 12 (see PARA 619 et seq).

15 Local Government Act 1972 s 29A(3)(a) (as added: see note 11).

16 Local Government Act 1972 s 29A(3)(b) (as added: see note 11).

17 Local Government Act 1972 s 29A(3) (as added: see note 11).

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44. Applications and orders relating to communities.

No community application¹ may be made in relation to any community:

- 50 (1) during the two years beginning with the coming into force of an order relating to the community under Part IV of the Local Government Act 1972² consequent on the report or proposals of the Welsh Commission³ on a review⁴ of any area of which the community forms part or, as the case may be, of the community⁵; or
- 51 (2) during the two years beginning with the coming into force of an order on a community application in relation to the community⁶.

However, the Welsh Ministers⁷ may permit the making of a community application if requested to do so by the council of the area in which the community is situated or by the community council (if any) or a community meeting of the community⁸. On an application by the Welsh Commission at any time when conducting a review⁹ or on an application by a principal council¹⁰ at any time when conducting such a review¹¹, the Welsh Ministers may direct that no community application is to be made in relation to any community affected by the review until it further directs¹².

A community application may be made only if:

- 52 (a) a poll of the local government electors¹³ in the community has been held¹⁴;
- 53 (b) a majority of those voting in the poll support the proposal¹⁵; and
- 54 (c) in the case of an application for the grouping of communities¹⁶, the application is made jointly with the communities to be grouped under the common community council¹⁷.

The consent required for the creation or dissolution of a group of communities¹⁸ may be given by a community meeting only if a poll of the local government electors in the community has been held¹⁹, and a majority of those voting in the poll supports the proposal²⁰.

At any community meeting at which there is discussed a proposal:

- 55 (i) for the establishment, or for the dissolution, of a community council²¹;

- 56 (ii) for the grouping of the community with another community or communities²²,
under a common community council²³;
- 57 (iii) for the separation of the community from the communities with which it is
grouped under a common community council²⁴;
- 58 (iv) for the dissolution of the common community council for the communities
with which it is grouped²⁵;
- 59 (v) for the giving of the consent required for the creation or dissolution of a
group of communities²⁶,

a decision to hold a poll on the question is only effective if not less than the required number²⁷ of local government electors is present and voting²⁸. No poll may be held for these purposes before the end of the period of 42 days beginning with the day on which the decision to hold the poll was taken²⁹. The general provisions relating to voting at community meetings³⁰ have effect subject to these provisions³¹. Where the result of any poll (the 'previous poll') held for these purposes is the rejection of the proposal with respect to which the poll was held, no further poll on that question may be held before the end of the period of two years beginning with the date on which the previous poll was held³².

An order relating to communities made by a principal council³³ may contain such incidental, consequential, transitional or supplementary provision as may appear to the principal council to be necessary or proper for the purposes or in consequence of the order or for giving full effect to it³⁴.

1 ie an application under the Local Government Act 1972 s 28 (see PARA 42), s 29 (see PARA 43) or s 29(A) (see PARA 43); see s 30(5) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 4). See also the Local Government Act 1972 s 29B(1) (see note 14), s 31(1) (see note 34).

2 ie the Local Government Act 1972 Pt IV (ss 53-78): see PARA 77 et seq.

3 As to the Welsh Commission see PARA 77.

4 ie under the Local Government Act 1972 Pt IV (ss 53-78): see PARA 77 et seq.

5 Local Government Act 1972 s 30(1)(b) (amended by the Local Government Act 1992 s 27(1), Sch 3 para 11; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 4).

6 Local Government Act 1972 s 30(1)(c).

7 As to the Welsh Ministers see PARA 97.

8 See the Local Government Act 1972 s 30(4) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 4).

9 ie under the Local Government Act 1972 Pt IV (ss 53-78): see PARA 77 et seq.

10 As to the meaning of 'principal council' see PARA 23.

11 As to reviews by principal councils see PARA 80.

12 Local Government Act 1972 s 30(3) (amended by the Local Government Act 1992 Sch 3 para 11; and the Local Government (Wales) Act 1994 Sch 15 para 1, 4).

13 As to the meaning of 'local government elector' see PARA 127 note 2.

14 Local Government Act 1972 s 29B(1)(a) (s 29B added by the Local Government (Wales) Act 1994 s 12(1)). In the case of an application for an order dissolving a group of communities (ie an application under the Local Government Act 1972 s 29A(1): see PARA 43), s 29B(1)(a) applies in relation to each of the communities concerned: see s 29B(2) (as so added).

15 Local Government Act 1972 s 29B(1)(b) (as added: see note 14). In the case of an application for an order dissolving a group of communities (ie an application under s 29A(1): see PARA 43), s 29B(1)(b) applies in relation to each of the communities concerned: see s 29B(2) (as so added).

- 16 le an application under the Local Government Act 1972 s 29(1)(a): see PARA 43.
- 17 Local Government Act 1972 s 29B(1)(c) (as added: see note 14).
- 18 le the consent required by the Local Government Act 1972 s 29(2)(b) or s 29A(3)(b): see PARA 43.
- 19 Local Government Act 1972 s 29B(3)(a) (as added: see note 14).
- 20 Local Government Act 1972 s 29B(3)(b) (as added: see note 14).
- 21 Local Government Act 1972 s 29B(4)(a) (as added: see note 14). As to the establishment or the dissolution of a community council see PARA 42.
- 22 le on an application under the Local Government Act 1972 s 29(1)(a) or s 29(1)(b): see PARA 43.
- 23 Local Government Act 1972 s 29B(4)(b) (as added: see note 14). As to the grouping of communities under a common community council see PARA 43.
- 24 Local Government Act 1972 s 29B(4)(c) (as added: see note 14). As to the separation of a community from a group of communities see PARA 43.
- 25 Local Government Act 1972 s 29B(4)(d) (as added: see note 14). As to the dissolution of a common community council see PARA 42.
- 26 Local Government Act 1972 s 29B(4)(e) (as added: see note 14). The reference in the text to consent required for the creation or dissolution of a group of communities is a reference to the consent required by s 29(2)(b) or s 29A(3)(b): see PARA 43.
- 27 The required number of local government electors is such number as is equal to 30% of the local government electorate or, if that number exceeds 300, is 300: Local Government Act 1972 s 29B(5) (as added: see note 14).
- 28 Local Government Act 1972 s 29B(4) (as added: see note 14).
- 29 Local Government Act 1972 s 29B(6) (as added: see note 14).
- 30 le the Local Government Act 1972 s 99, Sch 12 para 34: see PARA 638.
- 31 Local Government Act 1972 s 29B(7) (as added: see note 14).
- 32 Local Government Act 1972 s 29B(8) (as added: see note 14).
- 33 le under the Local Government Act 1972 s 28, s 29 or s 29A: see PARAS 42-43.
- 34 Local Government Act 1972 s 31(1) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 5). The order may include provision for the transfer and management or custody of real or personal property and for the transfer of rights and liabilities: see the Local Government Act 1972 s 31(1) (as so amended). Where any such order is made, s 68 (see PARA 88) applies as if the order were made under Pt IV: s 31(2). Two copies of every such order must be sent to the Welsh Ministers: see s 31(3).

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45. Constitution of community councils.

A community council is a body corporate consisting of the chairman and the community councillors¹. Each community council has the name of the community, with the addition, in the case of its English name, of the words 'Community Council'² and, in the case of its Welsh name, of the words 'Cyngor Cymuned'³. A community council has the functions given to it by the Local Government Act 1972 or otherwise⁴. A community council need not have a common seal⁵, and

where it does not have a seal, any act which is required to be signified by an instrument under seal may be signified by an instrument signed and sealed by two members of the council⁶.

- 1 Local Government Act 1972 s 33(1) (s 33 substituted by the Local Government (Wales) Act 1994 s 13).
- 2 Local Government Act 1972 s 33(2)(a) (as substituted: see note 1).
- 3 Local Government Act 1972 s 33(2)(b) (as substituted: see note 1).
- 4 Local Government Act 1972 s 33(1) (as substituted: see note 1). As to specific functions see PARA 579 et seq.
- 5 Local Government Act 1972 s 33(3) (as substituted: see note 1).
- 6 Local Government Act 1972 s 33(4) (as substituted: see note 1).

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46. Community meetings.

A meeting of the local government electors¹ for a community, known as a 'community meeting'², may be convened for the purpose of discussing community affairs and exercising any functions conferred by any enactment on such meetings³. A community meeting may authorise the person presiding⁴ and two other local government electors present at the meeting to do anything or any class of things authorised by the meeting⁵. Any act of a community meeting may be signified by an instrument signed by the person presiding and two other local government electors present at the meeting⁶.

- 1 As to the meaning of 'local government elector' see PARA 127 note 2.
- 2 A community meeting consists of local government electors for the community: Local Government Act 1972 s 32(1).
- 3 Local Government Act 1972 s 27(1) (s 27 substituted by the Local Government (Wales) Act 1994 s 8). As to convening meetings see PARA 635.
- 4 In a community having a community council, the chairman of the council, if present, presides at a community meeting and, in any other case, the community meeting appoints a person to be chairman at that meeting: see the Local Government Act 1972 s 99, Sch 12 para 33; and PARA 637.
- 5 Local Government Act 1972 s 32(2).
- 6 Local Government Act 1972 s 32(3).

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(iv) Joint Authorities

47. Establishment of joint authorities.

The Local Government Act 1985 established joint authorities¹ to act as fire and rescue authorities² and integrated transport authorities³.

- 1 See the Local Government Act 1985 Pt IV (ss 23-42). 'Joint authority' means any authority established by Pt IV: see s 105(1); and the Local Government Act 1972 s 270(1) (definition added by the Local Government Act 1985 s 84, Sch 14 Pt I para 34). As to the members of a joint authority see PARA 118.
- 2 As to fire and rescue authorities see PARA 48.
- 3 As to integrated transport authorities see PARA 49.

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48. Fire and rescue authorities.

The Local Government Act 1985 established for each metropolitan county¹ a body corporate to be known by the name of that county with the addition of the words 'Fire and Rescue Authority'². The authorities established by these provisions are known as metropolitan county fire and rescue authorities³. Each metropolitan county fire and rescue authority consists of members of the constituent councils⁴ appointed by them to be members of the authority⁵.

- 1 As to metropolitan counties see PARA 24.
- 2 Local Government Act 1985 s 26(1) (amended by the Civil Contingencies Act 2004 Sch 2 para 10(2)). See further **FIRE SERVICES**. The fire and rescue authorities were previously known as the Fire and Civil Defence Authorities and were established on the appointed day: see the Local Government Act 1985 s 26(1). For the purposes of Pt IV (ss 23-42), the 'appointed day', in relation to the establishment of the joint authorities, was such day before the abolition date (ie 1 April 1986: see s 1(2)) as the Secretary of State or the Welsh Ministers might by order appoint, and different days could be appointed for different authorities: see s 23. The day that was appointed was 15 September 1985: see the Local Government Act 1985 (New Authorities) (Appointed Days) Order 1985, SI 1985/1283, art 3 (revoked). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 3 Local Government Act 1985 s 26(2) (amended by the Civil Contingencies Act 2004 Sch 2 para 10(2)).
- 4 The constituent councils in relation to a metropolitan county fire and rescue authority are the councils of the metropolitan districts comprised in the county: Local Government Act 1985 s 26(4) (amended by the Civil Contingencies Act 2004 Sch 2 Pt 1 para 10(2)).
- 5 Local Government Act 1985 s 26(3) (amended by the Civil Contingencies Act 2004 Sch 2 para 10(2)). As to members of joint authorities see PARA 118.

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49. Integrated transport authorities.

The Local Government Act 1985 established for each metropolitan county¹ a body corporate to be known by the name of that county with the addition of the words 'Integrated Transport Authority'². The authorities established by these provisions are known as integrated transport

authorities³. Each integrated transport authority consists of members of the constituent councils⁴ appointed by them to be members of the authority⁵.

- 1 As to metropolitan counties see PARA 24.
- 2 Local Government Act 1985 s 28(1) (amended by the Local Transport Act 2008 Sch 4 para 53(2)(a)).
- 3 Local Government Act 1985 s 28(2) (amended by the Local Transport Act 2008 Sch 4 para 53(2)(b)).
- 4 The constituent councils in relation to an integrated transport authority established under the Local Government Act 1985 s 28 are the councils of the metropolitan districts comprised in the county: Local Government Act 1985 s 28(4) (amended by the Local Transport Act 2008 Sch 4 para 53(2)(c)).
- 5 Local Government Act 1985 s 28(3) (amended by the Local Transport Act 2008 Sch 4 para 53(2)(d)).

UPDATE

49 Integrated transport authorities

TEXT AND NOTES--As to arrangements relating to integrated transport authorities, see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247A.

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50. Airports.

If, in the case of any airport¹ in respect of which a metropolitan county council² had property, rights or liabilities, the Secretary of State or Welsh Ministers³ were satisfied that the councils of the districts comprised in the county had agreed on:

- 60 (1) the operation of the airport by a committee consisting of or including members appointed by all or any of those councils⁴; and
- 61 (2) the transfer or division of the property, rights and liabilities of the metropolitan county council to or among all or any of those councils⁵,

he, or they, could, by an order coming into force 1 April 1986, provide for the transfer or division of that property and those rights and liabilities in accordance with the agreement⁶.

If, in the case of any such airport, the Secretary of State or the Welsh Ministers were not satisfied as aforesaid he, or they, could by an order coming into force on 1 April 1986 provide for the transfer of the property, rights and liabilities of the metropolitan county council in respect of the airport to the metropolitan county passenger transport authority⁷.

Before making any order under these provisions⁸, the Secretary of State or the Welsh Ministers had to be satisfied that any necessary consent under the Civil Aviation Act 1982⁹ had been or would be obtained¹⁰.

- 1 As to airports generally see **AIR LAW**.
- 2 As to the abolition of metropolitan county councils see PARA 24.
- 3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

- 4 See the Local Government Act 1985 s 40(1)(a).
- 5 See the Local Government Act 1985 s 40(1)(b).
- 6 See the Local Government Act 1985 ss 1(2), 40(1).
- 7 See the Local Government Act 1985 ss 1(2), 40(2).
- 8 As to the order that was made see the Local Government Reorganisation (Airports) Order 1986, SI 1986/425.
- 9 If any necessary consent under the Civil Aviation Act 1982 s 30: see **AIR LAW** vol 2 (2008) PARA 47.
- 10 See the Local Government Act 1985 s 40(3) (amended by the Airports Act 1986 s 83(1), Sch 4 para 10; and the Local Transport Act 2008 Sch 4 para 53(1), (5)).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/(2) AREAS AND AUTHORITIES/(iv) Joint Authorities/51. Waste and litter.

51. Waste and litter.

In England, all the local authorities¹ that are local waste authorities² in relation to an area may make a proposal to the Secretary of State³ for the establishment of a joint waste authority for those areas⁴. A proposal may not be made if there is already a local authority for the whole of the specified area which has all of the specified waste functions⁵. The Secretary of State may implement the proposal by order with or without modifications⁶. The order may make provision enabling the Secretary of State to require the authority established by the order to submit to him a scheme for the winding-up of the authority and the transfer of its functions, property, staff, rights and liabilities to appropriate local authorities⁷. The Secretary of State may by order exclude any functions from those for which a joint waste authority was established⁸.

A proposal may not be made by any local authority unless the local authority has prepared a draft of the proposal and taken reasonable steps to consult the relevant electors⁹ and any interested person in their area about the draft¹⁰.

A person may be a member of a joint waste authority only if he is:

- 62 (1) a member of a local authority which would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has¹¹;
- 63 (2) the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple in a case where the sub-treasurer or the under treasurer would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has¹².

A similar power exists in relation to Wales¹³.

1 As to the meaning of 'local authority' see PARA 23 note 2.

2 A local authority is a 'local waste authority' in relation to the specified area if its area forms the whole or part of the specified area and it currently has one or more of the specified waste functions: Local Government and Public Involvement in Health Act 2007 s 205(3). A proposal under s 205 may be made by (and only by) all the local authorities that are local waste authorities in relation to the area specified in the proposal: s 205(2). See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 621.

3 As to the Secretary of State see PARA 96. In making a proposal under the Local Government and Public Involvement in Health Act 2007 s 205 the local authorities must have regard to any guidance from the Secretary of State as to: (1) what a proposal should seek to achieve; (2) matters that should be taken into account in formulating a proposal: s 205(7).

4 See the Local Government and Public Involvement in Health Act 2007 ss 205(1), 207(1), (2), 211. For the purposes of the Waste and Emissions Trading Act 2003 Pt 1, Ch 1 (ss 1-28) a joint waste authority for an area in England established by order under the Local Government and Public Involvement in Health Act 2007 s 207 that has the function of disposing of biodegradable municipal waste is the waste disposal authority for that area: see the Waste and Emissions Trading Act 2003 s 24(5), (6) (amended by the Local Government and Public Involvement in Health Act 2007 s 209(1)).

5 Local Government and Public Involvement in Health Act 2007 s 205(4). For the purposes of ss 205, 207 'specified' means specified in the proposal and 'waste function' means a function conferred on a local authority by or under the Environmental Protection Act 1990 Pt 2 (ss 29-78), Pt 4 (ss 86-105); Waste and Emissions Trading Act 2003 s 32: Local Government and Public Involvement in Health Act 2007 ss 205(8), 207(11).

6 Local Government and Public Involvement in Health Act 2007 s 207(1). The power of the Secretary of State under s 207(1) to implement a proposal with modifications does not include power to:

- 48 (1) establish a joint waste authority for an area that is different from the area specified in the proposal (s 207(10)(a)); or
- 49 (2) establish a joint waste authority to discharge waste functions that are not specified in the proposal (s 207(10)(b)).

7 Local Government and Public Involvement in Health Act 2007 s 207(3). The Secretary of State may by order provide for giving effect (with or without modification) to any scheme submitted to him under a provision made by virtue of s 207(3) and for the dissolution of the authority: s 207(4). The Secretary of State may exercise such provisions only where he receives a request to do so from all the appropriate local authorities or he considers that it is necessary to do so: s 207(5). An order under s 207 may include incidental, consequential, transitional or supplementary provision: s 207(7). The provision that may be made by virtue of s 207(7) includes in particular provision:

- 50 (1) for the transfer of property, rights or liabilities (s 207(8)(a));
- 51 (2) for legal proceedings commenced by or against any authority to be continued by or against an authority to whom property, rights or liabilities are transferred (s 207(8)(b));
- 52 (3) for the transfer of staff, compensation for loss of office, pensions and other staffing matters (s 207(8)(c));
- 53 (4) for treating any authority to whom a transfer is made for any purposes as the same person in law as the authority from whom the transfer is made (s 207(8)(d)).

The provision that may be made by virtue of s 207(7) includes provision amending, modifying, excluding or applying (with or without modifications) any enactment or any instrument made under any enactment: s 207(9). In s 207 'appropriate local authority', in relation to a joint waste authority, means a local authority which would, but for the establishment of the joint waste authority, have one or more of the functions that the joint waste authority has: s 207(11).

8 Local Government and Public Involvement in Health Act 2007 s 207(6).

9 A person is a 'relevant elector':

- 54 (1) in relation to a county council, district council or London borough council, if he is a local government elector for the council's area (Local Government and Public Involvement in Health Act 2007 s 206(2)(a));
- 55 (2) in relation to the Common Council of the City of London, if his name appears in a ward list published under the City of London (Various Powers) Act 1957 s 7 (Local Government and Public Involvement in Health Act 2007 s 206(2)(b));
- 56 (3) in relation to the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple, if his name appears in the ward list published with respect to the ward of Farringdon Without in the City under the City of London (Various Powers) Act 1957 s 7 (Local Government and Public Involvement in Health Act 2007 s 206(2)(c));

- 57 (4) in relation to an authority established under the Local Government Act 1985 s 10 (joint arrangements for waste disposal functions), if he is a relevant elector in relation to any local authority whose area forms part of the area for which the authority was established (Local Government and Public Involvement in Health Act 2007 s 206(2)(d));
- 58 (5) in relation to a joint waste authority established under s 207, if he is a relevant elector in relation to any local authority whose area forms the whole or part of the area for which the joint waste authority was established (s 206(2)(e)).

For the purposes of s 206 'local government elector' means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts: s 206(3).

10 Local Government and Public Involvement in Health Act 2007 s 206(1). The Secretary of State may by regulations make provision as to: (1) matters to be included in a proposal under s 205; (2) information that must accompany a proposal: s 205(5). Such regulations may in particular provide that a proposal under s 205 must include proposals:

- 59 (a) as to the number of members of the proposed authority (s 205(6)(a));
- 60 (b) as to the number of members to be appointed by each local authority making the proposal (s 205(6)(b));
- 61 (c) as to the procedure for appointing a chairman and a vice-chairman (s 205(6)(c));
- 62 (d) for the costs of the proposed authority to be met by the local authorities making the proposal, and as to the basis on which the amount payable by each of the local authorities is to be determined (s 205(6)(d)).

The Joint Waste Authorities (Proposals) Regulations 2009, SI 2009/105, have been made under the Local Government and Public Involvement in Health Act 2007 s 205(5), (6). These regulations provide that a proposal under s 205 must include proposals as to the following matters: (i) the name, date of establishment and area of the proposed joint waste authority; (ii) the waste functions to be transferred to the proposed joint waste authority by each local authority making the proposal; (iii) certain information relating to the members of the proposed joint waste authority and staffing arrangements; (iv) the date the first meeting of the proposed joint waste authority will be held; (v) voting procedures for decisions taken by members of the proposed joint waste authority; and (vi) proposals for costs, details of the anticipated level of funding required and the transfer of any assets or liabilities: see the Joint Waste Authorities (Proposals) Regulations 2009, SI 2009/105, reg 2(a), Sch 1. The regulations also provide that a proposal under the Local Government and Public Involvement in Health Act 2007 s 205 must be accompanied by the following information: (A) for each of the local authorities making the proposal, details of each authority's area and the waste functions conferred on each authority; (B) information relating to the exclusion of certain waste functions; (C) letters of approval confirming the local authorities involved have approved the making of the proposal; (D) a summary of the consultation undertaken on a draft of the proposal; (E) details of any other joint working arrangements; (F) details of any contract for street cleansing and the collection, recycling, treatment or disposal of waste to which the proposed joint waste authority would be a party; (G) details of any arrangements to ensure the proposed joint waste authority fulfils any duties it has as a waste disposal authority for the purposes of the Waste and Emissions Trading Act 2003; (H) details of any private finance initiative credits relating to waste management awarded to the local authorities making the proposal; (I) details of any anticipated costs savings and environmental benefits relating to establishing the proposed joint waste authority; and (J) details of the strategy for communicating the establishment of the proposed joint waste authority: see the Joint Waste Authorities (Proposals) Regulations 2009, SI 2009/150, reg 2(b), Sch 2.

11 Local Government and Public Involvement in Health Act 2007 s 208(a).

12 Local Government and Public Involvement in Health Act 2007 s 208(b).

13 See the Local Government and Public Involvement in Health Act 2007 s 210.

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52. Questions on discharge of functions.

Arrangements must be made (whether by standing orders¹ or otherwise) for enabling questions on the discharge of the functions of a joint authority² to be put in the course of the proceedings of any constituent council by members of that council for answer by a member of it who is also a member of the authority³ and is nominated by the authority for that purpose⁴.

1 As to standing orders see PARA 620.

2 As to the meaning of 'joint authority' see PARA 47 note 1. As to the discharge of functions generally see PARA 579 et seq.

3 As to members of joint authorities see PARA 118. As to members of local authorities generally see PARA 117 et seq.

4 Local Government Act 1985 s 41.

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53. Reorganisation of functions.

The Secretary of State¹ may by order make provision for² the transfer to the council of a metropolitan district or London borough or to the Common Council of the City of London in respect of its area of any functions that would otherwise be exercisable in respect of that area by a joint authority³ or, in the case of the council of a metropolitan district, by a passenger transport executive⁴.

Before making an order the Secretary of State must consult each of the following bodies which appears to him to be affected by the order, that is to say: the council of a county, district or London borough and the Common Council of the City of London⁵. An order may contain such supplementary and transitional provisions as the Secretary of State thinks necessary or expedient, including provisions for the transfer of property, staff, rights and liabilities⁶.

1 As to the Secretary of State see PARA 96.

2 See the Local Government Act 1985 s 42(1). At the date at which this volume states the law no such order had been made.

3 As to the meaning of 'joint authority' see PARA 47 note 1.

4 Local Government Act 1985 s 42(1)(d) (amended by the Local Transport Act 2008 ss 98(1), (3), 131, Sch 7 Pt 4). As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247.

5 Local Government Act 1985 s 42(3) (amended by the Police and Magistrates' Courts Act 1994 Sch 9 Pt I; and the Local Transport Act 2008 ss 98(1), (3), 131, Sch 7 Pt 4).

6 Local Government Act 1985 s 42(4). An order may also include provisions amending any other provision of the Local Government Act 1985, any other enactment or any instrument made under any enactment: see s 42(4).

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(3) STRUCTURAL, BOUNDARY AND ELECTORAL CHANGES

(i) Introduction

54. Introduction.

The Local Government and Public Involvement in Health Act 2007 contains significant reforms to the process by which the structure and boundaries of local government are determined¹. It also seeks to encourage 'whole council' elections and to introduce single member wards². The reforms primarily relate to England and it is necessary to consider the law before and after commencement of the 2007 Act³.

1 See the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23); and PARA 57 et seq.

2 See the Local Government and Public Involvement in Health Act 2007 Pt 2 (ss 31-61); and PARAS 135-139.

3 See PARA 55 et seq.

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(ii) England

A. THE POSITION PRIOR TO THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

55. Generally.

The Local Government Act 1992 provided comprehensive machinery for the re-organisation of local government by the Secretary of State¹. Whilst the Secretary of State was entitled to conduct non-statutory reviews and consultation, he was not able to use that non-statutory process to bypass any of the provisions in the 1992 Act². Such non-statutory processes were of no legal effect³.

1 See the Local Government Act 1992 (as originally enacted).

2 See the Local Government Act 1992 s 13 (as originally enacted (now repealed)).

3 See *R (on the application of Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548.

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56. The Local Government Boundary Commission for England, the Local Government Commission for England and the Electoral Commission.

The Local Government Boundary Commission for England was abolished¹ and replaced by the Local Government Commission for England².

The Local Government Commission had the power³ to conduct a review of such areas in England and make recommendations to the Secretary of State⁴, who could give effect to all or any of the recommendations, with or without modifications⁵. The Secretary of State also had power to make regulations of general application⁶.

The functions of the Local Government Commission for England are now transferred to the Electoral Commission⁷.

1 See the Local Government Act 1992 s 24(1) (repealed). In relation to England, the provisions of the Local Government Act 1972 Pt IV (ss 46-78), relating to changes in local government areas, are largely repealed: see the Local Government Act 1992 s 29, Sch 4 Pt II. This repeal does not affect the continuing validity of any provision contained in any order made under the Local Government Act 1972 Pt IV: see the Local Government Act 1992 s 29(3). For transitional provisions see s 24(3)-(5) (repealed).

2 Any property, rights or liabilities to which the Local Government Boundary Commission for England was entitled or subject immediately before 31 October 1992 (ie the commencement of this provision: see the Local Government Act 1992 (Commencement No 1) Order 1992, SI 1992/2371) became property, rights or liabilities of the Local Government Commission for England: Local Government Act 1992 s 24(2) (repealed). As to the establishment of the Local Government Commission for England see s 12, Sch 2.

3 The Local Government Act 1992 ss 13, 14, 17, 19, 26 were amended, ss 14A, 14B added and ss 15A, 16, 18, 20-24 repealed by the Local Government and Public Involvement in Health Act 2007 ss 22, 241, Sch 1 paras 1-10, Sch 18. However orders made under the Local Government Act 1992 s 17 continue to have effect as though s 17, and s 26 in so far as it applies to s 17, were not so amended, and those amendments do not affect the continuing operation of orders made by the Secretary of State for the purpose of giving effect (with or without modifications) to recommendations made by the Electoral Commission to the Secretary of State for structural and boundary changes and orders making incidental, consequential, supplementary or transitional provision for the purposes or in consequence of such orders: see the Local Government and Public Involvement in Health Act 2007 (Commencement No 1 and Savings) Order 2007, SI 2007/3136, art 3(1), (2). As to further savings see art 3(3)-(7).

4 See the Local Government Act 1992 s 13 (substituted by SI 2001/3962). See note 3.

5 See the Local Government Act 1992 s 17. See note 3.

6 See the Local Government Act 1992 s 19(1), (2) (amended by the Police and Magistrates' Courts Act 1984 s 39(7); the Justices of the Peace Act 1997 Sch 5 para 31). See note 3. As to the continuing power of the Secretary of State to make regulations in relation to electoral changes see the Local Government Act 1992 (as amended by the Local Government and Public Involvement in Health Act 2007 (see note 3)); and **ELECTIONS AND REFERENDUMS**.

The following orders have been made under the Local Government Act 1992 s 19:

- 63 (1) the Local Government Changes for England Regulations 1994, SI 1994/867 (amended by SI 1995/590; SI 1995/1055; SI 1995/1748; SI 1996/330; SI 1996/611; SI 2001/3384; SI 2008/2867);
- 64 (2) the Local Government Changes for England (Finance) Regulations 1994, SI 1994/2825 (amended by SI 1995/2862; SI 1996/563);
- 65 (3) the Local Government Changes for England (Calculation of Council Tax Base) Regulations 1994, SI 1994/2826;
- 66 (4) the Local Government Changes for England (Non-Domestic Rating) (Contributions) Regulations 1994, SI 1994/3054;
- 67 (5) the Local Government Changes for England (Collection Fund Surpluses and Deficits) Regulations 1994, SI 1994/3115;

- 68 (6) the Local Government Changes for England (Finance, Miscellaneous Provisions) Regulations 1994, SI 1994/3223;
- 69 (7) the Local Government Changes for England (Non-Domestic Rating, Collection and Enforcement and Discretionary Relief) Regulations 1995, SI 1995/212;
- 70 (8) the Local Government Changes for England (Community Charge and Council Tax, Administration and Enforcement) Regulations 1995, SI 1995/247;
- 71 (9) the Local Government Changes for England (Property Transfer and Transitional Payments) Regulations 1995, SI 1995/402 (amended by SI 1995/1748; SI 1995/2796; SI 1996/312; SI 1996/2825; SI 1998/1129, SI 2001/3649);
- 72 (10) the Local Government Changes for England (Staff) Regulations 1995, SI 1995/520 (amended by SI 1996/455);
- 73 (11) the Local Government Changes for England (Housing Benefit and Council Tax Benefit) Regulations 1995, SI 1995/531 (amended by SI 1996/547);
- 74 (12) the Local Government Change for England Regulations 1995, SI 1995/590;
- 75 (13) the Local Government Changes for England (Community Charge and Council Tax, Valuation and Community Charge Tribunals and Alteration of Lists and Appeals) Regulations 1995, SI 1995/624;
- 76 (14) the Local Government Changes for England (No 2) Regulations 1995, SI 1995/1055;
- 77 (15) the Local Government Changes for England (Miscellaneous Provision) Regulations 1995, SI 1995/1748 (amended by the Lieutenancies Act 1997 s 8(5); SI 1996/330; SI 2004/2044);
- 78 (16) the Local Government Changes for England (School Reorganisation and Admissions) Regulations 1995, SI 1995/2368;
- 79 (17) the Local Government Changes (Rent Act) Regulations 1995, SI 1995/2451;
- 80 (18) the Local Government Changes for England (Property Transfer and Transitional Payments) (Amendment) Regulations 1995, SI 1995/2796;
- 81 (19) the Local Government Changes for England (Finance) (Amendment) Regulations 1995, SI 1995/2862;
- 82 (20) the Local Government Changes for England (Collection Fund Surpluses and Deficits) Regulations 1995, SI 1995/2889 (amended by SI 1996/2177; SI 1998/1937);
- 83 (21) the Local Government Changes for England (Valuation and Community Charge Tribunals) Regulations 1996, SI 1996/43;
- 84 (22) the Charter Trustees Regulations 1996, SI 1996/263 (amended by SI 1996/610; SI 1999/545; SI 2004/533);
- 85 (23) the Local Government Changes for England (Property Transfer and Transitional Payments) (Amendment) Regulations 1996, SI 1996/312;
- 86 (24) the Local Government Changes for England (Miscellaneous Provision) Regulations 1996, SI 1996/330 (amended by SI 2000/1410; SI 2006/2914);
- 87 (25) the Local Government Changes for England (Staff) (Amendment) Regulations 1996, SI 1996/455;
- 88 (26) the Local Government Changes for England (Housing Benefit and Council Tax Benefit) Amendment Regulations 1996, SI 1996/547;
- 89 (27) the Local Government Changes for England (Finance) (Amendment) Regulations 1996, SI 1996/563;
- 90 (28) the Charter Trustees (Amendment) Regulations 1996, SI 1996/610;
- 91 (29) the Local Government Changes for England (Amendment) Regulations 1996, SI 1996/611;

- 92 (30) the Local Government Reorganisation (Amendment of Coroners Act 1988) Regulations 1996, SI 1996/655;
- 93 (31) the Local Government Changes for England (Magistrates' Courts) Regulations 1996, SI 1996/674 (amended by the Justices of the Peace Act 1997 s 73(3), Sch 6 Pt II; and the Access to Justice Act 1999 s 106, Sch 15 Pt V);
- 94 (32) the Local Government Changes for England (Finance-Social Services Grants) Regulations 1996, SI 1996/691;
- 95 (33) the Local Government Changes for England (Education) (Miscellaneous Provisions) Regulations 1996, SI 1996/710 (amended by the Education Act 1996 s 582(2), Sch 38 Pt III; and SI 2008/2683);
- 96 (34) the Local Government Changes for England (Collection Fund Surpluses and Deficits) (Amendment) Regulations 1996, SI 1996/2177;
- 97 (35) the Local Government Changes for England (Property Transfer and Transitional Payments) (Amendment) (No 2) Regulations 1996, SI 1996/2825;
- 98 (36) the Local Government Changes for England (Valuation and Community Charge Tribunals) Regulations 1997, SI 1997/75;
- 99 (37) the Local Government Changes for England (Transport Levying Bodies) Regulations 1997, SI 1997/165;
- 100 (38) the Combined Fire Authorities (Protection from Personal Liability) (England) Regulations 1997, SI 1997/2819 (amended by SI 2004/3168);
- 101 (39) the Local Government Changes for England (Valuation Tribunals) Regulations 1997, SI 1997/2954;
- 102 (40) the Local Government Reorganisation (Amendment of Coroners Act 1988) Regulations 1998, SI 1998/465;
- 103 (41) the Combined Fire Authorities (Secure Tenancies) (England) Regulations 1998, SI 1998/2213 (amended by SI 2004/3168);
- 104 (42) the Local Government Changes for England (Council Tax) (Transitional Reduction) Regulations 1999, SI 1999/259;
- 105 (43) the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384 (amended by SI 2008/1419).

See *Durham County Council v Darlington Borough Council* [2003] EWHC 2598 (Admin), [2004] LGR 311 (structural reorganisation; transfer of land under SI 1995/402).

7 See the Political Parties, Elections and Referendums Act 2000 s 18; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 65. As to the establishment of the Electoral Commission see s 1; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

UPDATE

56 The Local Government Boundary Commission for England, the Local Government Commission for England and the Electoral Commission

TEXT AND NOTES 1-6--Repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

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PUBLIC INVOLVEMENT IN HEALTH ACT 2007/(A) Structural and Boundary Changes/57. The Secretary of State.

B. THE POSITION SUBSEQUENT TO THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

(A) STRUCTURAL AND BOUNDARY CHANGES

57. The Secretary of State.

The Secretary of State may invite¹ any principal authority² in England to make one of the following types of proposal:

- 64 (1) a proposal that there should be a single tier of local government³ for the area in which the county is concerned⁴ (a Type A proposal)⁵;
- 65 (2) a proposal that there should be a single tier of local government for the area which is currently a district, or two or more districts, in the county concerned; and is specified in the proposal (a Type B proposal)⁶;
- 66 (3) a proposal that there should be a single tier of local government for the area specified in the proposal which currently consists of the county concerned or one or more districts in the county concerned and one or more relevant adjoining areas⁷ (a Type C proposal)⁸;
- 67 (4) a combination of two or more Type B or C proposals or one or more Type B proposals with one or more Type C proposals, where those proposals are not expressed to be in the alternative (a combined proposal)⁹.

Until 25 January 2008 the Secretary of State also had power to direct any principal authority to make one of the above proposals¹⁰.

If the Secretary of State invites a proposal, he may specify the date by which the proposal should be made¹¹. A proposal may only be made for an area where the whole or part is currently a two-tier area¹² and must have regard to any guidance from the Secretary of State as to what a proposal should seek to achieve and matters that would be taken into account in formulating a proposal¹³.

Where invitations¹⁴ are given to more than one authority, any authority that has received an invitation or direction may respond to the invitation, or comply with the direction, either by:

- 68 (a) making its own proposal in accordance with the invitation or direction¹⁵; or
- 69 (b) making a proposal, in accordance with the invitation or direction, jointly with any of the other authorities¹⁶.

An invitation or direction may be varied or revoked¹⁷.

If before 1 November 2007¹⁸:

- 70 (i) a pre-commencement invitation¹⁹ was given²⁰;
- 71 (ii) guidance as to what a proposal should seek to achieve, or as to matters that should be taken into account in formulating a proposal, was given by the Secretary of State in connection with such an invitation²¹;
- 72 (iii) a proposal was made in response to such an invitation²²; or
- 73 (iv) consultation was carried out by the Secretary of State in relation to such a proposal²³,

it is immaterial that the invitation or guidance was given, the proposal made, or the consultation carried out, before rather than after 1 November 2007²⁴.

1 As to the Secretary of State see PARA 96. An invitation or direction may either:

- 106 (1) be such that the authority may choose whether to make a Type A, Type B, Type C or combined proposal (Local Government and Public Involvement in Health Act 2007 s 2(8)(a)); or
- 107 (2) specify which one of those kinds of proposal is invited (or, in the case of a direction, required) (s 2(8)(b)).

2 For the purposes of the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23) each of the following is a principal authority: (1) a county council in England; (2) a district council in England: s 1(1).

3 For the purposes of the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23) there is a 'single tier of local government' for an area if:

- 108 (1) there is a county council and no district councils for that area (s 1(2)(a)); or
- 109 (2) there is a district council and no county council for that area (s 1(2)(b)).

An area is 'single-tier' if there is a single tier of local government for it (within the meaning of s 1) or it is a London borough: s 23(1), (2)(a).

For the purposes of head (2) above there is a county council 'for' an area which is a district if there is a county council which has in relation to that area the functions of a county council: s 1(3).

4 For the purposes of the Local Government and Public Involvement in Health Act 2007 s 2 the 'county concerned' means, in relation to a principal authority which is the council for a county, that county and, in relation to the council for a district, the county in which the district is: Local Government and Public Involvement in Health Act 2007 s 2(6).

5 See the Local Government and Public Involvement in Health Act 2007 s 2(1)(a), (2).

6 See the Local Government and Public Involvement in Health Act 2007 s 2(1)(b), (3).

7 For the purposes of the Local Government and Public Involvement in Health Act 2007 s 2 the 'relevant adjoining area' means an area which adjoins the county concerned and is currently a county in England, a district in England or two or more such counties or districts: s 2(7).

8 See the Local Government and Public Involvement in Health Act 2007 s 2(1)(c), (4).

9 See the Local Government and Public Involvement in Health Act 2007 s 2(1)(d), (5).

10 See the Local Government and Public Involvement in Health Act 2007 s 3(1)(a). Such a direction may be given on or before 25 January 2008 only where the Secretary of State believes that giving the direction would be in the interests of effective and convenient local government: s 3(1)(b).

11 Local Government and Public Involvement in Health Act 2007 s 3(3). This also applies to a direction under s 2: see s 3(2).

12 See the Local Government and Public Involvement in Health Act 2007 s 3(4). For the purposes of Pt 1 Ch 1 (ss 1-23) an area is 'two-tier' if it is:

- 110 (1) a district for which there is a district council and in relation to which a county council has the functions of a county council (s 23(1), (2)(b)(i)); or
- 111 (2) a county for which there is a county council and in which there are districts all of which have district councils (s 23(1), (2)(b)(ii)).

13 Local Government and Public Involvement in Health Act 2007 s 3(5).

14 This also applies to directions.

15 Local Government and Public Involvement in Health Act 2007 s 3(6)(a).

16 Local Government and Public Involvement in Health Act 2007 s 3(6)(b).

17 Local Government and Public Involvement in Health Act 2007 s 3(7). However a direction may not be varied after 25 January 2008 if the direction as originally given required the making of a Type A or Type B proposal and the direction as varied would require or permit the making of a Type C or combined proposal: s 3(8).

18 Ie the date on which the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23) commenced.

19 For these purposes 'pre-commencement invitation' means an invitation given by the Secretary of State before the commencement of Ch 1 (ie 1 November 2007) which, after that commencement, could have been given under the power in s 2: s 21(1).

20 Local Government and Public Involvement in Health Act 2007 s 21(2)(a).

21 Local Government and Public Involvement in Health Act 2007 s 21(2)(b).

22 Local Government and Public Involvement in Health Act 2007 s 21(2)(c). Any reference in ss 1-23 to a proposal 'in response to' an invitation or direction under s 2 is to a Type A, Type B, Type C or combined proposal which is in response to such an invitation or direction and is in accordance with the invitation or direction and s 3(4): s 23(3).

23 Local Government and Public Involvement in Health Act 2007 s 21(2)(d).

24 Local Government and Public Involvement in Health Act 2007 s 21(2). See also *R (on the application of Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548.

Accordingly (and without prejudice to the generality of s 21(2)):

112 (1) any reference in Pt 1 Ch 1 (ss 1-23) to an invitation under s 2 includes a pre-commencement invitation (s 21(3)(a));

113 (2) any reference in Pt 1 Ch 1 to a proposal made by virtue of s 2 includes a proposal (whenever made) made in response to a pre-commencement invitation (s 21(3)(b));

114 (3) any reference in Pt 1 Ch 1 to the Secretary of State's receiving a proposal in response to an invitation under s 2 includes his receiving before the commencement of Pt 1 Ch 1 a proposal made in response to a pre-commencement invitation (s 21(3)(c)).

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58. The advice of the Boundary Committee for England.

Where the Secretary of State¹ receives a proposal from a principal authority that there should be a single tier of local government, whether in response to an invitation or direction², he may request the Boundary Committee³ to advise, no later than a date specified in the request, on any matter that relates to the proposal and is specified in the request⁴. The Secretary of State may extend time for the provision of the advice⁵.

1 As to the Secretary of State see PARA 96.

2 Ie under the Local Government and Public Involvement in Health Act 2007 s 2 (see PARA 57).

3 As to the Boundary Committee for England see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 60-66.

4 Local Government and Public Involvement in Health Act 2007 s 4(1), (2).

5 See the Local Government and Public Involvement in Health Act 2007 s 4(3).

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59. Powers of the Boundary Committee for England.

Where the Boundary Committee receives a request for advice¹ it may provide such advice², and may also, if it thinks appropriate:

- 74 (1) recommend to the Secretary of State³ that he implement the proposal without modification⁴;
- 75 (2) recommend to the Secretary of State that he does not implement the proposal⁵;
- 76 (3) make an alternative proposal to the Secretary of State⁶.

In making a recommendation or an alternative proposal the Boundary Committee must have regard to any guidance issued by the Secretary of State about the exercise of the Boundary Committee's functions⁷. Before making an alternative proposal, the Boundary Committee must publish a draft of the proposal and take such steps as it considers sufficient to secure that persons who may be interested are informed of the draft proposal and the period within which representations about it may be made to the Boundary Committee⁸.

1 ie a request for advice under the Local Government and Public Involvement in Health Act 2007 s 4 (see PARA 58). As to the Boundary Committee for England see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 60-66.

2 Local Government and Public Involvement in Health Act 2007 s 5(1), (2).

3 As to the Secretary of State see PARA 96.

4 Local Government and Public Involvement in Health Act 2007 s 5(3)(a). For this purpose 'proposal' means the Type A, Type B, Type C or combined proposal to which the request for advice related: s 5(4). As the meanings of 'Type A', 'Type B', 'Type C' and 'combined proposal' see PARA 57. Any recommendation or alternative proposal under s 5 must be made no later than the relevant date: s 6(3). 'Relevant date' means the date specified in the request under s 4(2) (or, if a later date is substituted under s 4(3), the date substituted (or last substituted) under that provision): s 6(7).

5 Local Government and Public Involvement in Health Act 2007 s 5(3)(b).

6 Local Government and Public Involvement in Health Act 2007 s 5(3)(c). For this purpose 'alternative proposal' means a proposal that there should be a single tier of local government for that area that is or includes the whole or part of the county concerned and is specified in the alternative proposal or a proposal consisting of two or more proposals: s 5(5). 'County concerned' means:

115 (1) the county that, under s 2(6) (see PARA 57), is the county concerned in relation to the authority which made the proposal referred to in s 5(4) (s 5(6)(a)); or

116 (2) where that proposal was made by more than one authority, any county that (under s 2(6)) is the county concerned in relation to any of the authorities which made that proposal (s 5(6)(b)).

The area specified in an alternative proposal under s 5 may not extend into any area that is currently outside all local government areas: s 5(7).

7 Local Government and Public Involvement in Health Act 2007 s 6(2).

8 Local Government and Public Involvement in Health Act 2007 s 6(4). The Boundary Committee:

117 (1) must take into account any representations made to them within that period (s 6(5)(a));
and

118 (2) if they make any proposal to the Secretary of State, must inform any person who made such representations of the proposal made and that representations about the proposal may be made to the Secretary of State until the end of the relevant period (s 6(5)(b)).

In head (2) above 'relevant date' means four weeks beginning with the relevant date: s 6(6). The boundary committee has a degree of flexibility as to how consultation should be carried out: see: *R (on the application of Breckland District Council) v Boundary Committee* [2009] EWCA Civ 239, [2009] All ER (D) 250 (Mar).

UPDATE

59 Powers of the Boundary Committee for England

NOTE 8--See *R (on the application of Forest Heath DC) v Electoral Commission, Boundary Committee for England* [2009] EWHC 1682 (Admin), [2009] All ER (D) 102 (Jul) (failure of Boundary Committee's pre-consultation obligation) (reversed: [2009] EWCA Civ 1296, [2009] All ER (D) 30 (Dec)). *Breckland*, cited, reported at [2009] LGR 589.

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60. Procedure of the Boundary Committee.

The Boundary Committee¹ may request a local authority to provide, by such date as may be specified, any information which the Boundary Committee may reasonable require in connection with any of its advisory functions².

1 As to the Boundary Committee for England see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 60.

2 Local Government and Public Involvement in Health Act 2007 s 6(1).

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61. Implementation of proposals.

Where the Secretary of State¹ has received a proposal from any principal authority for a single tier of local government², he may by order implement that proposal, with or without modification³. However, if he has received an alternative proposal from the Boundary Committee⁴ he may by order implement that proposal, with or without modification⁵. Alternatively, he may take no action⁶.

The Secretary of State may not implement any proposal made by a principal authority⁷ without first consulting every authority affected by the proposal (other than the authority or authorities who made the proposal) and such other persons as he considers appropriate⁸. In the case of any alternative proposal from the Boundary Committee the Secretary of State may request the Boundary Committee to provide him with information or advice on any matter relating to the proposal⁹. Where it receives such a request, the Boundary Committee may provide the information or advice requested¹⁰. Where the Secretary of State implements any proposal, provision is made for transitional arrangements to operate¹¹.

1 As to the Secretary of State see PARA 96.

2 I.e. a proposal received in response to an invitation or direction under the Local Government and Public Involvement in Health Act 2007 s 2 (see PARA 57).

3 Local Government and Public Involvement in Health Act 2007 s 7(1)(a). However where the Secretary of State has made a request under s 4 (see PARA 58) in relation to the proposal received in response to the invitation or direction, he may not make an order or decision under s 7 before the end of six weeks beginning with the relevant date (as defined by s 6(7) (see PARA 59 note 4)): s 7(2). The power of the Secretary of State under s 7(1)(a) to implement a proposal with modifications includes power to make provision whose effect is that there will be a single tier of local government for an area (the 'area concerned') that includes all or part of an area specified in the proposal as one for which there should be a single tier of local government but is not an area that could itself have been so specified: s 11(6). However this does not authorise the area concerned to extend into any area that is currently outside all local government areas: s 11(7). As to the provisions that may be included when implementing the proposal see s 11; and PARA 64. Orders made under s 7 are local in nature and not covered in this work. However as to regulations supplementing orders made under s 7 see s 14; and PARA 64. Where an order under any provision of Pt 1 chapter 1 has been made by the Secretary of State and the Secretary of State is satisfied that there is a mistake in the order which cannot be rectified by a subsequent order made under that provision by virtue of the Interpretation Act 1978 s 14 (power to amend), the Secretary of State may rectify the mistake by order under the Local Government and Public Involvement in Health Act 2007 s 20: s 20(1). For this purpose a 'mistake' in an order includes a provision contained in or omitted from the order in reliance on inaccurate or incomplete information supplied by any public body (which includes a parish council): s 20(2), (3). For the purposes of ss 1-23 'public body' includes a local authority, a police authority, a residuary body established under s 17, a joint board, or joint committee, on which a local authority is represented, a levying body within the meaning of the Local Government Finance Act 1988 s 74(1) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 530); Local Government and Public Involvement in Health Act 2007 s 23(1). An order under s 7 may provide for an electoral division of a non-metropolitan county to return more than one councillor, and in such a case the Local Government Act 1972 s 6(2)(a) (see PARA 126) does not apply: Local Government and Public Involvement in Health Act 2007 s 12(4). As soon as practicable after the making of an order under s 7, the Electoral Commission must consider whether to exercise their power under the Local Government Act 1992 s 13(3) (see **ELECTIONS AND REFERENDUMS**) (power to direct the Boundary Committee to conduct a review of a specified area and recommend whether an electoral change should be made): Local Government and Public Involvement in Health Act 2007 s 12(5). An order of the Electoral Commission under the Local Government Act 1992 s 17 (electoral change) may, in consequence of any other provision of that order, revoke a provision of an order made under the Local Government and Public Involvement in Health Act 2007 s 7: s 12(6).

4 I.e. a proposal under the Local Government and Public Involvement in Health Act 2007 s 5 (see PARA 59).

5 Local Government and Public Involvement in Health Act 2007 s 7(1)(b).

6 Local Government and Public Involvement in Health Act 2007 s 7(1)(c).

7 I.e. an order under the Local Government and Public Involvement in Health Act 2007 s 7(1)(a).

8 Local Government and Public Involvement in Health Act 2007 s 7(3). An authority is affected by a proposal if it is a principal authority for an area or part of an area in which the proposal suggests should have a single tier of local government: s 7(4). Section 7(3) does not apply if the proposal was made jointly by every authority affected by it, and in that case the Secretary of State may before making an order under s 7(1)(a) (or deciding

not to) consult such other persons as he considers appropriate: s 7(5). As to the nature of consultation see *R v Devon County Council ex p Baker* [1995] 1 All ER 73, CA; *R v Brent London Borough Council, ex p Gunning* (1984) 84 LGR 168 and *R (on the application of Wainwright) v Richmond Upon Thames London Borough Council* [2001] EWCA Civ 2062, (2002) Times, 16 January, [2001] All ER (D) 422 (Dec).

9 Local Government and Public Involvement in Health Act 2007 s 7(6).

10 Local Government and Public Involvement in Health Act 2007 s 7(7).

11 See the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113 (amended by SI 2009/5).

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(B) BOUNDARY CHANGES

62. Review by Boundary Committee of local government areas.

The Boundary Committee¹ may, either on its own initiative or at the request of the Secretary of State² or a local authority, conduct a review of one or more local government areas³. Following such a review, the Boundary Committee may recommend to the Secretary of State such boundary changes⁴ as seems desirable⁵. However it may not recommend:

- 77 (1) a change consisting of the alteration of the boundary of a single-tier area and consequent abolition of an area that is currently two-tier⁶;
- 78 (2) a change consisting of the alternation of the boundary of a two-tier area and consequent abolition of an area that is currently single-tier⁷;
- 79 (3) a change consisting of the constitution of a new local government area and consequent abolition of an existing local government area where the new local government area would include the whole or part of an area that is currently single-tier; and the whole or part of any area that is currently two-tier⁸;
- 80 (4) a change consisting of the alteration of a local government area, or constitution of a new local government area, where the altered or new area would extent into an area that is currently located outside all local government areas⁹;
- 81 (5) a change whose effect would be that England (excluding the Isles of Scilly, the City of London, the Inner Temple and the Middle Temple) is no longer divided into areas each of which is a county divided into districts or comprising one district or a London Borough¹⁰.

The Boundary Committee may consider (and recommend) that no change is desirable¹¹ and must have regard to the need to secure effective and convenient local government and the need to reflect the identities and interests of local communities¹², together with any guidance issued by the Secretary of State¹³.

1 As to the Boundary Committee see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 60.

2 As to the Secretary of State see PARA 96.

3 Local Government and Public Involvement in Health Act 2007 s 8(1).

- 4 A boundary change means any of the following or any combination of the following:
 - 119 (1) the alteration of a local government area boundary (Local Government and Public Involvement in Health Act 2007 s 8(3)(a));
 - 120 (2) the abolition of a local government area (s 8(3)(b));
 - 121 (3) the constitution of a new local government area (s 8(3)(c)).
- 5 Local Government and Public Involvement in Health Act 2007 s 8(2).
- 6 Local Government and Public Involvement in Health Act 2007 s 8(4)(a).
- 7 Local Government and Public Involvement in Health Act 2007 s 8(4)(b).
- 8 Local Government and Public Involvement in Health Act 2007 s 8(4)(c).
- 9 Local Government and Public Involvement in Health Act 2007 s 8(4)(d).
- 10 Local Government and Public Involvement in Health Act 2007 s 8(4)(e).
- 11 See the Local Government and Public Involvement in Health Act 2007 s 8(5).
- 12 Local Government and Public Involvement in Health Act 2007 s 8(6).
- 13 See the Local Government and Public Involvement in Health Act 2007 s 8(7).

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63. Consultation by the Boundary Committee.

Where the Boundary Committee carries out a review of one or more local government areas¹, it must consult the council of any local government area to which the review related and such other local authorities, parish councils and other persons who appear to have an interest².

Before making any recommendation to the Secretary of State³, the Boundary Committee must publish a draft of the recommendations and take such steps as they consider sufficient to secure that persons who may be interested are informed of the draft recommendations and the period within which representations may be made to the Boundary Committee⁴.

¹ ie a review under the Local Government and Public Involvement in Health Act 2007 s 8 (see PARA 62). As to the Boundary Committee see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 60. As to the meaning of 'local government area' see PARA 22.

² See the Local Government and Public Involvement in Health Act 2007 s 9(1), (2).

³ As to the Secretary of State see PARA 96.

⁴ Local Government and Public Involvement in Health Act 2007 s 9(3). The Boundary Committee must take into account any representations made to it within that period and if it makes any recommendation to the Secretary of State, must inform any person who made such representations of the recommendation made and that representations about the recommendation may be made to the Secretary of State until the end of four weeks beginning with the recommendation date: s 9(4). 'Recommendation date' means the date the recommendation was sent by the Boundary Committee to the Secretary of State: s 9(5). As to the nature of consultation see *R v Devon County Council, ex p Baker* [1995] 1 All ER 73, CA; *R v Brent London Borough*

Council, ex p Gunning (1984) 84 LGR 168; *R (on the application Wainwright) v Richmond Upon Thames London Borough Council* [2001] EWCA Civ 2062, (2002) Times, 16 January, [2001] All ER (D) 422 (Dec).

UPDATE

63 Consultation by the Boundary Committee

NOTE 4--See *R (on the application of Forest Heath DC) v Electoral Commission, Boundary Committee for England* [2009] EWCA Civ 1296, [2009] All ER (D) 30 (Dec).

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64. Implementation of recommendations by order.

Where the Boundary Committee makes a recommendation to the Secretary of State that a boundary change is desirable¹ the Secretary of State may, by order, implement any proposal with or without modification². Alternatively, he may take no action³ or request a further review⁴.

The implementing order⁵ may, in particular, make provision for⁶:

- 82 (1) the constitution of a new local government area⁷;
- 83 (2) the abolition of an existing local government area⁸;
- 84 (3) the boundary of any local government area⁹;
- 85 (4) whether a county or district is to be metropolitan or non-metropolitan¹⁰;
- 86 (5) the establishment, as a county council, district council or London borough council, of an authority for any local government area¹¹;
- 87 (6) the winding up and dissolution of any existing local authority¹²;
- 88 (7) the transfer to a county council of functions, in relation to an area, of district councils¹³;
- 89 (8) the transfer to a district council of the functions, in relation to an area, of a county council¹⁴;
- 90 (9) the name of any local government area¹⁵;
- 91 (10) the name of any local authority¹⁶;
- 92 (11) the boundary of any parish¹⁷;
- 93 (12) electoral matters¹⁸;
- 94 (13) the establishment or membership of public bodies in any area affected by the order and the election of members of such bodies¹⁹;
- 95 (14) the abolition or establishment, or the restriction or extension of the jurisdiction of any public body in or over any part of any area affected by the order²⁰;
- 96 (15) the boundary of any police area in England²¹.

The order may also deal with any incidental, consequential, transitional or supplemental provisions²² and the Secretary of State may by regulations of general application make incidental, consequential, transitional or supplementary provision for the purposes or in consequence of any orders²³ or for giving full effect to such orders²⁴. Such provisions may, in particular, deal with the transfer of property, right or liabilities, the transfer of staff, legal liabilities and the like²⁵.

1 le where the Boundary Committee makes a recommendation under the Local Government and Public Involvement in Health Act 2007 s 8(2) (see PARA 62). As to the Boundary Committee see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 60. As to the Secretary of State see PARA 96.

2 Local Government and Public Involvement in Health Act 2007 s 10(1)(a). An order under s 10 may provide for an electoral division of a non-metropolitan county to return more than one councillor, and in such a case the Local Government Act 1972 s 6(2)(a) (see PARA 126) does not apply: Local Government and Public Involvement in Health Act 2007 s 12(4). As soon as practicable after the making of an order under s 10, the Electoral Commission must consider whether to exercise its power under the Local Government Act 1992 s 13(3) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 92) (power to direct the Boundary Committee to conduct a review of a specified area and recommend whether an electoral change should be made): Local Government and Public Involvement in Health Act 2007 s 12(5). An order of the Electoral Commission under the Local Government Act 1992 s 17 (electoral change) may, in consequence of any other provision of that order, revoke a provision of an order made under the Local Government and Public Involvement in Health Act 2007 s 10: s 12(6).

3 Local Government and Public Involvement in Health Act 2007 s 10(1)(b).

4 Local Government and Public Involvement in Health Act 2007 s 10(1)(c).

5 le an order under the Local Government and Public Involvement in Health Act 2007 s 7 (see PARA 61) or s 10.

6 le may include provision for the purpose of implementing a proposal or recommendation or in connection with the implementation of a proposal or recommendation, for or with respect to any of the matters listed in heads (1)-(15) and includes implementing with modifications: see the Local Government and Public Involvement in Health Act 2007 s 11(1), (2).

7 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(a).

8 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(b).

9 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(c).

10 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(d).

11 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(e). For this purpose:

122 (1) the 'establishment' of an authority as a council for a county includes an existing district council's becoming the county council for the county (s 11(5)(a));

123 (2) the 'establishment' of an authority as a council for a district includes an existing county council's becoming the district council for the district (s 11(5)(b)).

12 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(f).

13 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(g).

14 Local Government and Public Involvement in Health Act 2007 s 11(1)(a), (3)(h).

15 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(a).

16 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(b).

17 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(c).

18 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(d). 'Electoral matters' mean any of the following: the total number of members of any local authority or parish council; the number and boundaries of electoral areas for the purpose of election of councillors; the number of councillors to be returned by any electoral area; the name of any electoral area; the election of councillors for any electoral area; the order of retirement of councillors; the election of a mayor of a local authority; the election of an executive of a local authority; the appointment by the Secretary of State of an existing local authority to be members of a new local authority for a transitional period; the appointment for a transitional period of an executive of a new local authority; the functions of a new local authority and the discharge of these functions during a transitional period: s 12(1). For this purpose 'new local authority' means a local authority established by the order and 'transitional period' means a period before the coming into office of members of the authority elected at the

first election after the establishment of the authority: s 12(2). 'Establishment' is read in accordance with s 11(5): s 12(3).

19 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(e). Any reference in ss 1-23, however framed, to a body affected by an order includes a body whose area or functions are affected by the order, which is to cease to exist in pursuance of the order or which is established by or in consequence of the order: s 23(4).

20 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(f).

21 Local Government and Public Involvement in Health Act 2007 s 11(1)(b), (4)(g). The Secretary of State must exercise his powers under s 11(4)(g) in such a way as to ensure that none of the following is divided between two or more police areas:

124 (1) a county in which there are no district councils (s 13(4)(a));

125 (2) a district (s 13(4)(b));

126 (3) a London borough (s 13(4)(c)).

As to the meaning of 'public body' see PARA 61 note 3.

22 See the Local Government and Public Involvement in Health Act 2007 s 13(1). The order may relate to other provisions of the order or a previous order: s 13(3).

23 The orders under the Local Government and Public Involvement in Health Act 2007 s 7 or s 10.

24 Local Government and Public Involvement in Health Act 2007 s 14(1). Any such regulations have effect subject to any provision included in an order under s 7 (see PARA 61) or s 10: s 14(3). The following orders have been made under s 14: the Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008, SI 2008/1419 (amended by SI 2009/276); the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113; the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008, SI 2008/2176; the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008, SI 2008/2867; the Local Government (Structural Changes) (Finance) Regulations 2008, SI 2008/3022; the Local Government (Structural Changes) (Further Financial Provisions and Amendment) Regulations 2009, SI 2009/5; the Local Government (Structural Changes) (Further Transitional and Supplementary Provision and Miscellaneous Amendments) Regulations 2009, SI 2009/276; the Charter Trustees Regulations 2009, SI 2009/467; and the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009, SI 2009/486.

25 See the Local Government and Public Involvement in Health Act 2007 ss 13(2), 14(2). In ss 13 and 14 references to incidental, consequential, transitional or supplementary provision include, in particular, provision:

127 (1) for the transfer of functions, property, rights or liabilities from a local authority or police authority for any area to another local authority or police authority whose area consists of or includes the whole or part of that area (s 15(1)(a));

128 (2) for the transfer of property, rights or liabilities, and of related functions, from an authority which ceases to exist to a residuary body established under s 17 (see PARA 66) (s 15(1)(b));

129 (3) for legal proceedings commenced by or against any body to be continued by or against a body to whom functions, property, rights or liabilities are transferred (s 15(1)(c));

130 (4) for the transfer of staff, compensation for loss of office, pensions and other staffing matters (s 15(1)(d));

131 (5) for treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made (s 15(1)(e));

132 (6) with respect to the management or custody of transferred property (real or personal) (s 15(1)(f));

133 (7) with respect to the functions, areas of jurisdiction and costs and expenses of any public body or of any justice of the peace other than a District Judge (Magistrates' Courts), any coroner or keeper of the rolls, any lord-lieutenant, lieutenant or high sheriff or any other officers (including police officers) within the area of any local authority affected by an order under s 7 or 10 (s 15(1)(g));

134 (8) with respect to the functions of any District Judge (Magistrates' Courts) (s 15(1)(h));

135 (9) with respect to charter trustees (s 15(1)(i));

136 (10) equivalent to any provision that could be contained in an agreement under s 16 (agreements about incidental matters: see PARA 65) (s 15(1)(j)).

Any order under s 7 or 10 or regulations under s 14 may for any incidental, consequential, transitional or supplementary purpose modify, exclude or apply (with or without modifications) any enactment; repeal or revoke any enactment with or without savings: s 15(2). For this purpose 'enactment' includes: (a) any enactment contained in this Act (other than a provision of this Part) or in an Act passed after this Act; (b) any instrument made at any time under an enactment (including an enactment contained in this Act or in an Act passed after this Act); (c) any charter, whenever granted and 'modify' includes amend: s 15(3).

UPDATE

64 Implementation of recommendations by order

NOTE 24--SI 2008/2176 amended: SI 2009/5.

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65. Agreements about incidental matters.

Any public bodies¹ affected by an order implementing proposals for a single tier of government² may from time to time make agreements with respect to:

- 97 (1) any property, income, rights, liabilities and expenses (so far as affected by the order) of the parties to the agreement³;
- 98 (2) any financial relations between the parties to the agreement⁴.

Such an agreement may in particular provide:

- 99 (a) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property⁵;
- 100 (b) for the making of payments by any party to the agreement in respect of property, rights and liabilities so transferred or retained, such joint use or the remuneration or compensation payable to any person⁶;
- 101 (c) for any such payment to be made by instalments or otherwise⁷;
- 102 (d) for interest to be charged on any such instalments⁸.

In default of agreement about any disputed matter⁹, the matter is to be referred to the arbitration of a single arbitrator agreed on by the parties or in default of agreement, appointed by the Secretary of State¹⁰.

¹ For this purpose 'public body' includes a parish council: Local Government and Public Involvement in Health Act 2007 s 16(6). As to the meaning of 'public body' see PARA 61 note 3.

² I.e. an order under the Local Government and Public Involvement in Health Act 2007 s 7 (see PARA 61) or s 10 (see PARA 64).

3 Local Government and Public Involvement in Health Act 2007 s 16(1)(a).

4 Local Government and Public Involvement in Health Act 2007 s 16(1)(b).

5 Local Government and Public Involvement in Health Act 2007 s 16(2)(a).

6 Local Government and Public Involvement in Health Act 2007 s 16(2)(b).

7 Local Government and Public Involvement in Health Act 2007 s 16(2)(c).

8 Local Government and Public Involvement in Health Act 2007 s 16(2)(d).

9 For this purpose 'disputed matter' means any matter that could be the subject of provision contained in an agreement under the Local Government and Public Involvement in Health Act 2007 s 16 and is the subject of a dispute between two or more public bodies that is not resolved by or under any order or regulations under Pt 1 Ch 1: s 16(5).

10 Local Government and Public Involvement in Health Act 2007 s 16(3). The arbitrator's award may make any provision that could be contained in an agreement under s 16: s 16(4).

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66. Residuary bodies.

The Secretary of State¹ may by order² establish one or more bodies ('residuary bodies'), which are to be bodies corporate, for the purpose of taking over any property, rights or liabilities, and any related functions, of local authorities which cease to exist by virtue of certain orders³. Such an order may:

- 103 (1) make provision with respect to the constitution and membership of a residuary body⁴;
- 104 (2) make provision with respect to the powers of a residuary body to make levies and to borrow and lend money and the treatment and distribution of capital and other money by such a body⁵;
- 105 (3) make provision with respect to the keeping and auditing of accounts of a residuary body⁶;
- 106 (4) make provision with respect to directions which may be given by the Secretary of State in relation to the carrying out by a residuary body of any of its functions⁷;
- 107 (5) make provision for enabling the Secretary of State to require a residuary body to submit to him a scheme for the winding up of the body and the disposal of its property, rights and liabilities and related functions⁸; and

the Secretary of State may by order provide: (a) for the transfer to any other body or bodies (including any body or bodies corporate established under the order for the purpose) of any property, rights or liabilities, and any related functions, of a residuary body⁹; and (b) for giving effect, with or without modifications, to any scheme submitted to him¹⁰ and for the dissolution of a residuary body¹¹.

1 As to the Secretary of State see PARA 96.

2 An order under the Local Government and Public Involvement in Health Act 2007 s 17 may include incidental, consequential, transitional or supplementary provision, including in particular provision of a kind

mentioned in s 15(1)(c)-(f), and s 15(2), (3) (power to apply etc enactments) apply to an order under s 17 as to an order under s 7: s 17(4), (5).

3 Local Government and Public Involvement in Health Act 2007 s 17(1). The certain orders referred to in the text are orders under s 7 (see PARA 61) or s 10 (see PARA 64).

4 Local Government and Public Involvement in Health Act 2007 s 17(2)(a).

5 Local Government and Public Involvement in Health Act 2007 s 17(2)(b).

6 Local Government and Public Involvement in Health Act 2007 s 17(2)(c).

7 Local Government and Public Involvement in Health Act 2007 s 17(2)(d).

8 Local Government and Public Involvement in Health Act 2007 s 17(2)(e).

9 Local Government and Public Involvement in Health Act 2007 s 17(3)(a).

10 Local Government and Public Involvement in Health Act 2007 s 17(3)(b).

11 Local Government and Public Involvement in Health Act 2007 s 17(3)(b).

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67. Staff commission.

The Secretary of State¹ may by order establish one or more staff commissions² for the purpose of:

- 108 (1) considering and keeping under review the arrangements for the recruitment of staff by relevant authorities³ affected by orders under the Local Government and Public Involvement in Health Act 2007 Part 1 Chapter 1⁴ and for the transfer, in consequence of the provisions of any such order, of staff employed by such authorities⁵;
- 109 (2) considering such staffing problems arising in consequence of such an order, and such other matters relating to staff employed by any such authority, as may be referred to the staff commission by the Secretary of State⁶; and
- 110 (3) advising the Secretary of State on the steps necessary to safeguard the interests of such staff⁷.

Such a commission may be established either for the whole or for any part of England⁸.

The Secretary of State may give directions to a staff commission as to its procedure⁹ and to any relevant authority affected by the order¹⁰ with respect to: (a) the supply of any information requested and the implementation of any advice given by a staff commission¹¹; and (b) the payment by such an authority of any expenses incurred by a staff commission in doing anything requested by the authority¹². Any expenses incurred by a staff commission under these provisions and not recovered from a relevant authority must be paid by the Secretary of State out of money provided by Parliament¹³.

The Secretary of State may by order provide for the winding up of any staff commission established under these provisions¹⁴.

- 1 As to the Secretary of State see PARA 96.
- 2 'Staff' includes officers and employees: Local Government and Public Involvement in Health Act 2007 s 23(1). At the date at which this volume states the law no such orders had been made.
- 3 For these purposes, 'relevant authority' means a local authority or residuary body established under the Local Government and Public Involvement in Health Act 2007 s 17: s 18(8).
- 4 ie the Local Government and Public Involvement in Health Act 2007 ss 1-23.
- 5 Local Government and Public Involvement in Health Act 2007 s 18(1)(a).
- 6 Local Government and Public Involvement in Health Act 2007 s 18(1)(b).
- 7 Local Government and Public Involvement in Health Act 2007 s 18(1)(c).
- 8 Local Government and Public Involvement in Health Act 2007 s 18(2).
- 9 Local Government and Public Involvement in Health Act 2007 s 18(3). A direction under s 18 may be varied or revoked by a subsequent direction: s 18(7).
- 10 ie the order under the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23).
- 11 Local Government and Public Involvement in Health Act 2007 s 18(4)(a).
- 12 Local Government and Public Involvement in Health Act 2007 s 18(4)(b).
- 13 Local Government and Public Involvement in Health Act 2007 s 18(5).
- 14 Local Government and Public Involvement in Health Act 2007 s 18(6).

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(C) COMMUNITY GOVERNANCE REORGANISATION

68. Undertaking community governance reviews.

A principal council¹ may undertake a community governance review², that is to say, a review of the whole or part of the principal council's area³, for the purpose of making recommendations with regard to the constitution of new parishes⁴, the alteration or abolition of existing parishes⁵, the grouping or de-grouping of parishes⁶, and consequential matters⁷.

Where a principal council which is not in the course of undertaking a community governance review receives a community governance petition⁸ which relates to the whole or part of the council's area, it must undertake a community governance review that has terms of reference⁹ that allow for the petition to be considered¹⁰.

Where a principal council is in the course of undertaking a community governance review of part of the council's area, and it receives a community governance petition which relates to another part of the council's area, wholly outside the area already under review, it must follow one of the following options¹¹:

- 111 (1) the principal council may modify the terms of reference of the current review so that they allow for the petition to be considered¹²;

- 112 (2) the principal council may undertake a community governance review that is separate from the current review, and has terms of reference that allow for the petition to be considered¹³;
- 113 (3) the principal council may modify the terms of reference of the current review, undertake a community governance review that is separate from the current review, and secure that (when taken together) the terms of reference of the current review (as modified), and the terms of reference of the new review, allow for the petition to be considered¹⁴.

Where a principal council is in the course of undertaking a community governance review:

- 114 (a) of part of the council's area and receives a community governance petition which relates to part of the council's area and the petition area¹⁵ is not wholly outside the area under review¹⁶;
- 115 (b) of part of the council's area and receives a community governance petition which relates to the whole of the council's area¹⁷; or
- 116 (c) of the whole of the council's area and receives a community governance petition which relates to the whole or part of the council's area¹⁸,

it is for the council to decide what action (if any) to take¹⁹ in response to that petition²⁰.

The Secretary of State²¹ may issue guidance about undertaking community governance reviews²².

1 'Principal council' means (1) a district council in England; (2) a county council in England for an area in which there are no district councils; or (3) a London borough council: Local Government and Public Involvement in Health Act 2007 s 102(2). As to areas and authorities in England see PARA 24 et seq.

2 Local Government and Public Involvement in Health Act 2007 s 82. In undertaking a community governance review the principal council must comply with the Local Government and Public Involvement in Health Act 2007 Pt 4, Ch 3 (ss 79-102), and the terms of reference of the review: s 79(2). A district council which is to undertake a community governance review must notify the county council for its area (if any) that the review is to be undertaken, and of the terms of reference of the review (including any modification of those terms): s 79(3). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (3)(a).

3 le under the Local Government and Public Involvement in Health Act 2007 ss 87, 89: see PARAS 70, 71.

4 le under the Local Government and Public Involvement in Health Act 2007 ss 88-90: see PARA 71.

5 le under the Local Government and Public Involvement in Health Act 2007 s 91: see PARA 72.

6 Local Government and Public Involvement in Health Act 2007 s 79(1). Recommendations relating to consequential matters are made under s 92: see PARA 73.

7 A community governance petition is a petition for a community governance review to be undertaken: Local Government and Public Involvement in Health Act 2007 s 80(1). A petition is not a valid community governance petition unless the following conditions are met (so far as they are applicable):

- 137 (1) it must be signed as follows: (a) if the petition area has fewer than 500 local government electors, the petition must be signed by at least 50% of the electors; (b) if the petition area has between 500 and 2,500 local government electors, the petition must be signed by at least 250 of the electors; (c) if the petition area has more than 2,500 local government electors, the petition must be signed by at least 10% of the electors (s 80(3));
- 138 (2) it must define the area to which the review is to relate (whether on a map or otherwise), and specify one or more recommendations which the petitioners wish a community governance review to consider making (s 80(4));
- 139 (3) if the specified recommendations include the constitution of a new parish, the petition must define the area of the new parish (whether on a map or otherwise) (s 80(5));

- 140 (4) if the specified recommendations include the alteration of the area of an existing parish, the petition must define the area of the parish as it would be after alteration (whether on a map or otherwise) (s 80(6)).

If the specified recommendations include the constitution of a new parish, the petition is to be treated for the purposes of Pt 4, Ch 3 (ss 79-102) as if the specified recommendations also include the recommendations in s 87(5)-(7) (see PARA 70): s 80(7). If the specified recommendations include the establishment of a parish council or parish meeting for an area which does not exist as a parish, the petition is to be treated for the purposes of Pt 4, Ch 3 (ss 79-102) as if the specified recommendations also include recommendations for such a parish to come into being (either by constitution of a new parish or alteration of the area of an existing parish): s 80(8). 'Specified recommendations', in relation to a community governance petition, means the recommendations specified in the petition, or treated by s 80 as included in the recommendations specified in the petition: s 102(2). As to the meaning of 'local government elector' see PARA 813 note 1; definition applied by s 102(2).

8 Local Government and Public Involvement in Health Act 2007 s 83(1).

9 The terms of reference of a community governance review are the terms on which the review is to be undertaken: Local Government and Public Involvement in Health Act 2007 s 81(1). They must specify the area under review: s 81(2). Subject to ss 81(2), 83 and 84 (see PARA 68), it is for a principal council to decide the terms of reference of any community governance review which the council is to undertake, and to decide what modifications (if any) to make to terms of reference: s 81(4). As soon as practicable after deciding terms of reference, the principal council must publish them: s 81(5). As soon as practicable after modifying terms of reference, the principal council must publish the modified terms: s 81(6). A principal council 'begins' a community governance review when the council publishes the terms of reference of the review: s 102(3).

10 Local Government and Public Involvement in Health Act 2007 s 83(2). This duty does not apply if the principal council has concluded a previous community governance review within the relevant two-year period, and in its opinion the petition area covers the whole or a significant part of the area to which the previous review related: s 83(3). In such a case it is for the council to decide what action (if any) to take under s 82 (see text and notes 1, 2) or s 81(4)(b) (see note 9) in response to that petition: s 85(1), (2). 'Relevant two-year period', in relation to receipt of a community governance petition, means the period of two years ending with the day on which the petition is received by the principal council: s 102(2). A principal council 'concludes' a community governance review when the council publishes the recommendations made in the review: s 102(4). A principal council is 'in the course of undertaking' a community governance review in the period between beginning the review, and concluding it: s 102(5). The terms of reference of a community governance review 'allow for a community governance petition to be considered' if the terms of reference of the review are such that the area under review includes the whole of the petition area and the recommendations to be considered by the review include all of the petition's specified recommendations: s 102(6).

11 Local Government and Public Involvement in Health Act 2007 s 84(1), (2). This duty does not apply if the principal council has concluded a previous community governance review within the relevant two-year period, and in the council's opinion the petition area covers the whole or a significant part of the area to which the previous review related: s 84(3). In such a case it is for the council to decide what action (if any) to take under s 82 (see text and notes 1, 2) or s 81(4)(b) (see note 9) in response to that petition: s 85(1), (3).

12 See the Local Government and Public Involvement in Health Act 2007 s 84(4).

13 See the Local Government and Public Involvement in Health Act 2007 s 84(5).

14 See the Local Government and Public Involvement in Health Act 2007 s 84(6).

15 'Petition area' means the area to which a community governance petition relates: Local Government and Public Involvement in Health Act 2007 s 102(2).

16 See the Local Government and Public Involvement in Health Act 2007 s 85(4). 'Area under review' in relation to a community governance review, means however much of the area of a principal council is subject to the review: s 102(2).

17 See the Local Government and Public Involvement in Health Act 2007 s 85(5).

18 See the Local Government and Public Involvement in Health Act 2007 s 85(6).

19 See under the Local Government and Public Involvement in Health Act 2007 s 82 (see text and notes 1, 2) or s 81(4)(b) (see note 10).

20 See the Local Government and Public Involvement in Health Act 2007 s 85(1).

21 As to the Secretary of State see PARA 96.

22 Local Government and Public Involvement in Health Act 2007 s 100(1). A principal council must have regard to any guidance issued under s 100: s 100(4). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (2).

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69. Reorganisation of community governance.

Where a community governance review is undertaken¹, the principal council² may, by order, give effect to the recommendations made in the review³. However, such a reorganisation order may not include provision giving effect to any recommendations to change protected electoral arrangements⁴, unless the Electoral Commission agrees to that provision⁵.

A reorganisation order must include a map showing in general outline the area affected by the order⁶. It may also vary or revoke a provision of an order previously made under relevant provisions⁷. If a principal council makes a reorganisation order, it must send two copies of the order to both the Secretary of State⁸ and the Electoral Commission⁹.

The Secretary of State may by regulations of general application make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, reorganisation orders¹⁰. Such regulations have effect subject to any provision made by a reorganisation order¹¹.

The Secretary of State may issue guidance about giving effect to recommendations made in community governance reviews¹².

1 Local Government and Public Involvement in Health Act 2007 s 86(1). As to community governance reviews see PARA 68. For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, regs 7(1), (2), 8(3).

2 As to the meaning of 'principal council' see PARA 68 note 1.

3 Local Government and Public Involvement in Health Act 2007 s 86(2). The principal council may not give effect to recommendations made to the Electoral Commission in accordance with s 92: see PARA 73. As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

A reorganisation order may include such incidental, consequential, transitional or supplementary provision as may appear to the principal council to be necessary or proper for the purposes of, or in consequence of, or for giving full effect to, the order: s 98(3). It may include:

- 141 (1) provision with respect to the transfer and management or custody of property (whether real or personal) (s 98(4)(a)); and
- 142 (2) provision with respect to the transfer of functions, property, rights and liabilities (s 98(4)(b)).

Provision made under head (2) may include any of the following:

- 143 (a) provision for legal proceedings commenced by or against any body to be continued by or against a body to whom functions, property, rights or liabilities are transferred (s 98(5)(a));
- 144 (b) provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters (s 98(5)(b));

- 145 (c) provision for treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made (s 98(5)(c)).

A reorganisation order may also include provision for the exclusion or modification of the application of any of the Local Government Act 1972 ss 16(3), 90 (see PARAS 132, 142), or rules under the Representation of the People Act 1983 s 36 (see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 405), whenever made: s 98(6).

4 For these purposes electoral arrangements are 'protected' if: (1) they relate to the council of an existing parish; (2) they were made, or altered, by or in pursuance of an order under the Local Government Act 1992 s 17 (see PARA 56) or the Local Government and Rating Act 1997 s 14 (repealed); and (3) that order was made during the period of five years ending with the day on which the community governance review starts: Local Government and Public Involvement in Health Act 2007 s 86(6). 'Electoral arrangements', in relation to a parish council, means: (a) the year in which ordinary elections of councillors are to be held; (b) the number of councillors to be elected to the council, or (in the case of a common council) the number of councillors to be elected to the council by each parish; (c) the division (or not) of the parish, or (in the case of a common council) any of the parishes, into wards for the purpose of electing councillors; (d) the number and boundaries of any such wards; (e) the number of councillors to be elected for any such ward; (f) the name of any such ward: s 102(2).

5 Local Government and Public Involvement in Health Act 2007 s 86(3).

6 Local Government and Public Involvement in Health Act 2007 s 86(4).

7 Local Government and Public Involvement in Health Act 2007 s 86(5). The relevant provisions are: s 86; Pt 1 (ss 1-30); the Local Government Act 1992 s 17 (see PARA 56); the Local Government and Rating Act 1997 ss 16, 17 (repealed): see the Local Government and Public Involvement in Health Act 2007 s 86(5)(a)-(d).

8 As to the Secretary of State see PARA 96.

9 Local Government and Public Involvement in Health Act 2007 s 98(1).

10 Local Government and Public Involvement in Health Act 2007 s 97(1). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (2).

If the Secretary of State makes regulations under s 97, he must send two copies of the regulations to the Electoral Commission: s 98(2). Such regulations may include:

- 146 (1) provision with respect to the transfer and management or custody of property (whether real or personal) (s 98(4)(a));
- 147 (2) provision with respect to the transfer of functions, property, rights and liabilities (s 98(4)(b)).

Provision made under head (2) may include any of the following:

- 148 (a) provision for legal proceedings commenced by or against any body to be continued by or against a body to whom functions, property, rights or liabilities are transferred (s 98(5)(a));
- 149 (b) provision for the transfer of staff, compensation for loss of office, pensions and other staffing matters (s 98(5)(b));
- 150 (c) provision for treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made (s 98(5)(c)).

A reorganisation order may also include provision for the exclusion or modification of the application of any of the Local Government Act 1972 ss 16(3), 90 (see PARAS 132, 142), or rules under the Representation of the People Act 1983 s 36 (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 164), whenever made: s 98(6).

As to regulations which have been made under ss 97, 98 see the Local Government (Parishes and Parish Councils) (England) Regulations 2008, SI 2008/625; and the Local Government Finance (New Parishes) (England) Regulations 2008, SI 2008/626.

11 Local Government and Public Involvement in Health Act 2007 s 97(2).

12 Local Government and Public Involvement in Health Act 2007 s 100(3). A principal council must have regard to any guidance issued under s 100: s 100(4).

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70. Recommendation for the constitution of a new parish.

A community governance review¹ must make recommendations as to what new parish or parishes (if any) should be constituted in the area under review². A new parish is constituted in any one of the following ways:

- 117 (1) by establishing an unparished area³ as a parish⁴;
- 118 (2) by aggregating one or more unparished areas with one or more parished areas⁵;
- 119 (3) by aggregating parts of parishes⁶;
- 120 (4) by amalgamating two or more parishes⁷;
- 121 (5) by separating part of a parish⁸,

but the aggregation of one or more unparished areas with a single parish is not the constitution of a new parish⁹.

If the review recommends that a new parish should be constituted the review must also make recommendations as to the name of the new parish, and as to whether or not the new parish should have a parish council¹⁰. The review must also make recommendations as to whether or not the new parish should have one of the alternative styles¹¹.

1 As to the meaning of 'community governance review' see PARA 68.

2 Local Government and Public Involvement in Health Act 2007 s 87(1). As to the meaning of 'area under review' see PARA 68 note 16. As to parishes see PARA 27 et seq.

3 For these purposes 'unparished area' means an area which is not a parish, and is not part of a parish: Local Government and Public Involvement in Health Act 2007 s 87(3).

4 Local Government and Public Involvement in Health Act 2007 s 87(2)(a).

5 Local Government and Public Involvement in Health Act 2007 s 87(2)(b). For these purposes 'parished area' means an area which is a parish or is part of a parish: s 87(3).

6 Local Government and Public Involvement in Health Act 2007 s 87(2)(c).

7 Local Government and Public Involvement in Health Act 2007 s 87(2)(d).

8 Local Government and Public Involvement in Health Act 2007 s 87(2)(e).

9 Local Government and Public Involvement in Health Act 2007 s 87(2).

10 See the Local Government and Public Involvement in Health Act 2007 s 87(4), (5), (6). Where a community governance review is required to make recommendations as to whether or not a new parish should have a parish council (s 94(1)(a)):

151 (1) if the parish has 1,000 or more local government electors, the review must recommend that the parish should have a council (s 94(2));

152 (2) if the parish has 150 or fewer local government electors, the review must recommend that the parish should not have a council (s 94(3));

- 153 (3) if neither head (1) nor (2) applies, it is for the principal council to decide whether or not the parish should have a council (s 94(5)).

Head (2) does not apply if any part of the parish is currently a parish which has a council, or part of such a parish: s 94(4).

If a community governance review makes recommendations that a parish should have a parish council the review must also make recommendations as to what electoral arrangements should apply to the council: see s 89. The Electoral Commission may issue guidance about the making of recommendations under s 89, to which a principal council must have regard: s 100(2), (4). When deciding what electoral arrangements should apply to a new parish council, the principal council must consider (s 95(1)):

- 154 (a) whether the number, or distribution, of the local government electors for the parish would make a single election of councillors impracticable or inconvenient (s 95(3)(a));
- 155 (b) whether it is desirable that any area or areas of the parish should be separately represented on the council (s 95(3)(b)),

when deciding whether to recommend that a parish should, or should not, be or continue to be divided into wards for the purpose of electing councillors (s 95(2)).

If the principal council decides to recommend that a parish should be divided into wards, the principal council must have regard to (s 95(4)):

- 156 (i) the number of local government electors for the parish (s 95(5)(a));
- 157 (ii) any change in the number, or distribution, of the local government electors which is likely to occur in the period of five years beginning with the day when the review starts (s 95(5)(b));
- 158 (iii) the desirability of fixing boundaries which are, and will remain, easily identifiable (s 95(5)(c));
- 159 (iv) any local ties which will be broken by the fixing of any particular boundaries (s 95(5)(d)),

when considering the size and boundaries of the wards, and the number of councillors to be elected for each ward (s 95(4)(a), (b)).

If the principal council decides to recommend that a parish should not be divided into wards, the principal council must have regard to (s 95(6)):

- 160 (A) the number of local government electors for the parish (s 95(7)(a));
- 161 (B) any change in that number which is likely to occur in the period of five years beginning with the day when the review starts (s 95(7)(b)),

when considering the number of councillors to be elected for the parish (s 95(6)).

As to the meaning of 'electoral arrangements' see PARA 69 note 4. As to the meaning of 'local government electors' see PARA 127 note 2; definition applied by s 102(2). As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

11 Local Government and Public Involvement in Health Act 2007 s 87(7). As to the meaning of 'alternative styles' see PARA 31 note 2; definition applied by s 102(2).

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71. Existing parish under review.

In relation to each of the existing parishes under review¹ a community governance review² must³:

- 122 (1) make one of the following recommendations:
- 1
 1. (a) recommendations that the parish should not be abolished and that its area should not be altered⁴;
 2. (b) recommendations that the area of the parish should be altered⁵;
 3. (c) recommendations that the parish should be abolished⁶;
 - 2

123 (2) make recommendations as to whether or not the name of the parish should be changed⁷;

124 (3) make one of the following recommendations:
 - 3
 4. (a) (if the parish does not have a council) recommendations as to whether or not the parish should have a council⁸;
 5. (b) (if the parish has a council) recommendations as to whether or not the parish should continue to have a council⁹.
 - 4

However the review may not make any recommendations for the parish to begin to have an alternative style¹⁰ (if it does not already have one), or to cease to have an alternative style, or to have a different alternative style (if it already has one)¹¹.

1 For these purposes 'existing parishes under review' means each of the parishes (if any) which are already in existence in the area under review: Local Government and Public Involvement in Health Act 2007 s 88(6)(a). As to the meaning of 'area under review' see PARA 68 note 16.

2 As to the meaning of 'community governance review' see PARA 68. As to parishes see PARA 27 et seq.

3 See the Local Government and Public Involvement in Health Act 2007 s 88(1).

4 Local Government and Public Involvement in Health Act 2007 s 88(2)(a). For these purposes references to the alteration of an area of a parish are references to any alteration which is not the constitution of a new parish (within the meaning of s 87(2) (see PARA 70)): s 88(6)(b).

5 Local Government and Public Involvement in Health Act 2007 s 88(2)(b).

6 Local Government and Public Involvement in Health Act 2007 s 88(2)(c).

7 Local Government and Public Involvement in Health Act 2007 s 88(3).

8 Local Government and Public Involvement in Health Act 2007 s 88(4)(a). Where a community governance review is required to make recommendations as to whether or not a new parish should have a parish council (s 94(1)(b)):

162 (1) if the parish has 1,000 or more local government electors, the review must recommend that the parish should have a council (s 94(2));

163 (2) if the parish has 150 or fewer local government electors, the review must recommend that the parish should not have a council (s 94(3));

164 (3) if neither head (1) nor (2) applies, it is for the principal council to decide whether or not the parish should have a council (s 94(5)).

Head (2) does not apply if any part of the parish is currently a parish which has a council, or part of such a parish: s 94(4).

If a community governance review makes recommendations that a parish should have a parish council, the review must also make recommendations as to what electoral arrangements should apply to the council: see s 89. The Electoral Commission may issue guidance about the making of recommendations under s 89, to which a principal council must have regard: s 100(2), (4). When deciding what electoral arrangements should apply to a new parish council, the principal council must consider the provisions of s 95 (see PARA 70 note 10): s 95(1). As to the meaning of 'local government electors' see PARA 127 note 2; definition applied by s 102(2). As to the

meaning of 'electoral arrangements' see PARA 69 note 4. As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

9 Local Government and Public Involvement in Health Act 2007 s 88(4)(b). If a community governance review makes recommendations that a parish should continue to have a parish council, the review must also make recommendations as to what changes (if any) should be made to the electoral arrangements that apply to the council: see s 90. The Electoral Commission may issue guidance about the making of recommendations under s 90, to which a principal council must have regard: s 100(2), (4). When deciding what electoral arrangements should apply to a new parish council, the principal council must consider the provisions of s 95 (see PARA 70 note 10): s 95(1).

10 As to the meaning of 'alternative styles' see PARA 31 note 2; definition applied by s 102(2).

11 Local Government and Public Involvement in Health Act 2007 s 88(5).

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72. Grouping or de-grouping parishes.

A community governance review¹ may make recommendations as to whether or not grouping or de-grouping provision² should be made³. If the review makes such a recommendation it must in particular include recommendations as to what changes (if any) should be made to the electoral arrangements⁴ that apply to any council affected by the provision⁵.

1 As to the meaning of 'community governance review' see PARA 68.

2 The reference to grouping or de-grouping provision is a reference to provision equivalent to the provision of an order under the Local Government Act 1972 s 11 (see PARA 29): Local Government and Public Involvement in Health Act 2007 s 91(3).

3 Local Government and Public Involvement in Health Act 2007 s 91(1).

4 As to the meaning of 'electoral arrangements' see PARA 69 note 4.

5 Local Government and Public Involvement in Health Act 2007 s 91(2).

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73. Consequential recommendations.

Where a community governance review¹ makes recommendations with regard to parish reorganisation² it may make recommendations to the Electoral Commission³ as to what related⁴ alteration (if any) should be made to the boundaries of the electoral areas of any affected principal council⁵.

The Electoral Commission may by order give effect to any such recommendations⁶, and must notify each relevant principal council of whether or not it has done so⁷. If the Electoral

Commission has given effect to the recommendations, it must also send each relevant principal council⁸ two copies of the relevant order⁹.

1 As to the meaning of 'community governance review' see PARA 68.

2 le under the Local Government and Public Involvement in Health Act 2007 Pt 4, Ch 3 (ss 79-102).

3 As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

4 For these purposes 'related' means related to the other recommendations made under the Local Government and Public Involvement in Health Act 2007 Pt 4, Ch 3 (ss 79-102).

5 See the Local Government and Public Involvement in Health Act 2007 s 92(1), (2). For these purposes 'affected principal council' means any principal council whose area the community governance review relates to (including the council carrying out the review): s 92(6). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (3)(b). The Electoral Commission may issue guidance about the making of recommendations under s 92, to which a principal council must have regard: s 100(2), (4). As to the meaning of 'principal council' see PARA 68 note 1.

6 Local Government and Public Involvement in Health Act 2007 s 92(3).

An order under s 92 may include such incidental, consequential, transitional or supplementary provision as may appear to the Electoral Commission to be necessary or proper for the purposes of, or in consequence of, or for giving full effect to, the order: s 98(7).

7 Local Government and Public Involvement in Health Act 2007 s 92(4).

8 For these purposes 'relevant principal council', in relation to recommendations under s 92(2), means: (1) the principal council that made the recommendations; and (2) if the recommendations are made by a district council for an area for which there is a county council, the county council: s 92(6).

9 Local Government and Public Involvement in Health Act 2007 s 92(5).

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74. Duties when undertaking review.

The principal council¹ must comply with the duties noted below when undertaking a community governance review², but, subject to those duties, it is for the principal council to decide how to undertake the review³.

The principal council must consult the local government electors⁴ for the area under review⁵, and any other person or body (including a local authority⁶) which appears to the principal council to have an interest in the review⁷. The principal council must also have regard to the need to secure that community governance within the area under review reflects the identities and interests of the community in that area, and is effective and convenient⁸.

In deciding what recommendations to make, the principal council must take into account any other arrangements (apart from those relating to parishes and their institutions) that have already been made, or that could be made, for the purposes of community representation or community engagement in respect of the area under review⁹.

The principal council must take into account any representations received in connection with the review¹⁰. As soon as practicable after making any recommendations, the principal council

must publish the recommendations, and take such steps as it considers sufficient to secure that persons who may be interested in the review are informed of those recommendations¹¹.

The principal council must conclude the review within the period of 12 months starting with the day on which it began the review¹².

- 1 As to the meaning of 'principal council' see PARA 68 note 1.
- 2 See the Local Government and Public Involvement in Health Act 2007 s 93(1). As to the meaning of 'community governance review' see PARA 68.
- 3 Local Government and Public Involvement in Health Act 2007 s 93(2).
- 4 As to the meaning of 'local government electors' see PARA 127 note 2; definition applied by s 102(2).
- 5 Local Government and Public Involvement in Health Act 2007 s 93(3)(a). As to the meaning of 'area under review' see PARA 68 note 16.
- 6 As to the meaning of 'local authority' see PARA 23.
- 7 Local Government and Public Involvement in Health Act 2007 s 93(3)(b).
- 8 Local Government and Public Involvement in Health Act 2007 s 93(4).
- 9 Local Government and Public Involvement in Health Act 2007 s 93(5).
- 10 Local Government and Public Involvement in Health Act 2007 s 93(6).
- 11 Local Government and Public Involvement in Health Act 2007 s 93(7).
- 12 Local Government and Public Involvement in Health Act 2007 s 93(8).

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75. Publicising outcome of review.

If a community governance review¹ is undertaken², as soon as practicable after a principal council³ has decided to what extent it will give effect to the recommendations made in a community governance review, the council must publish that decision (and the council's reasons for making the decision)⁴ and take such steps as the council considers sufficient to secure that persons who may be interested in the review are informed of that decision and those reasons⁵.

If the council makes a reorganisation order⁶ as soon as practicable after making the order, the council must deposit at its principal office a copy of the reorganisation order⁷, and a map which shows the effects of the order in greater detail than the map included in the order⁸.

The council must make the copy of the order and the map available for public inspection at all reasonable times⁹, and publicise that the order and map are available for public inspection¹⁰.

In addition, as soon as practicable after making the order, the principal council must inform all of the following that the order has been made:

- 125 (1) the Secretary of State¹¹;

- 126 (2) the Electoral Commission¹²;
- 127 (3) the Office for National Statistics¹³;
- 128 (4) the Director General of the Ordnance Survey¹⁴;
- 129 (5) any other principal council to whose area the order relates¹⁵.

- 1 As to the meaning of 'community governance review' see PARA 68.
- 2 See the Local Government and Public Involvement in Health Act 2007 s 96(1). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (2).
- 3 As to the meaning of 'principal council' see PARA 68 note 1.
- 4 Local Government and Public Involvement in Health Act 2007 s 96(2)(a).
- 5 Local Government and Public Involvement in Health Act 2007 s 96(2)(b).
- 6 See the Local Government and Public Involvement in Health Act 2007 s 96(3). As to reorganisation orders see PARA 69.
- 7 Local Government and Public Involvement in Health Act 2007 s 96(4)(a).
- 8 Local Government and Public Involvement in Health Act 2007 s 96(4)(b).
- 9 Local Government and Public Involvement in Health Act 2007 s 96(5).
- 10 Local Government and Public Involvement in Health Act 2007 s 96(6).
- 11 Local Government and Public Involvement in Health Act 2007 s 96(7)(a). As to the Secretary of State see PARA 96.
- 12 Local Government and Public Involvement in Health Act 2007 s 96(7)(b). As to the 'Electoral Commission' see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.
- 13 Local Government and Public Involvement in Health Act 2007 s 96(7)(c). As to the Office for National Statistics see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605.
- 14 Local Government and Public Involvement in Health Act 2007 s 96(7)(d). As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.
- 15 Local Government and Public Involvement in Health Act 2007 s 96(7)(e).

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76. Agreements about incidental matters.

Any public bodies¹ affected by a reorganisation of community governance² may from time to time make agreements with respect to any property, income, rights, liabilities and expenses (so far as affected by the order) of the parties to the agreement, and any financial relations between the parties to the agreement³.

Such an agreement may in particular provide:

- 130 (1) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property⁴; and

- 131 (2) for the making of payments by any party to the agreement in respect of⁵:
- 5
6. (a) property, rights and liabilities so transferred or retained⁶;
7. (b) such joint use⁷; or
8. (c) the remuneration or compensation payable to any person⁸;
- 6
- 132 (3) for any such payment to be made by instalments or otherwise⁹;
- 133 (4) for interest to be charged on any such instalments¹⁰.

In default of agreement about any disputed matter¹¹, the matter is to be referred to the arbitration of a single arbitrator agreed on by the parties or, in default of agreement, appointed by the Secretary of State¹². The arbitrator's award may make any provision that could be contained in an agreement under this section¹³.

1 For these purposes 'public body' includes a parish council: Local Government and Public Involvement in Health Act 2007 s 16(6); definition applied by s 99(5).

2 For these purposes 'reorganisation of community governance' means any changes made by giving effect to a community governance review: Local Government and Public Involvement in Health Act 2007 s 99(5). As to community governance reviews see PARA 68.

3 Local Government and Public Involvement in Health Act 2007 s 99(1). For transitional provisions see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 7(1), (2).

4 Local Government and Public Involvement in Health Act 2007 s 99(2)(a).

5 Local Government and Public Involvement in Health Act 2007 s 99(2)(b).

6 Local Government and Public Involvement in Health Act 2007 s 99(2)(b)(i).

7 Local Government and Public Involvement in Health Act 2007 s 99(2)(b)(ii).

8 Local Government and Public Involvement in Health Act 2007 s 99(2)(b)(iii).

9 Local Government and Public Involvement in Health Act 2007 s 99(2)(c).

10 Local Government and Public Involvement in Health Act 2007 s 99(2)(d).

11 For these purposes 'disputed matter' means any matter that (1) could be the subject of provision contained in an agreement under this section; and (2) is the subject of a dispute between two or more public bodies that is not resolved by or under any order or regulations under the Local Government and Public Involvement in Health Act 2007 Pt 4, Ch 3 (ss 79-102): s 99(5).

12 Local Government and Public Involvement in Health Act 2007 s 99(3).

13 Local Government and Public Involvement in Health Act 2007 s 99(4).

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(iii) Wales

77. The Local Government Boundary Commission for Wales.

The Local Government Boundary Commission for Wales (the 'Welsh Commission') was established under the Local Government Act 1972¹ with the functions of carrying out reviews² and of making proposals for changes in local government areas³ in Wales⁴.

The Welsh Commission is a body corporate consisting of a chairman, a deputy chairman and not more than three other members⁵. At least one of the members of the Welsh Commission must be a person able to speak the Welsh language⁶. The members of the Welsh Commission are to be appointed by the Welsh Ministers⁷, and they hold and vacate office in accordance with the terms of their respective appointments⁸. Provision is made for the payment of salary or fees and allowances to each member of the Welsh Commission⁹. The Welsh Ministers may appoint, to assist and advise the Welsh Commission in the exercise of its functions, such persons as it thinks fit, being persons having expert knowledge likely to be of value to the Welsh Commission¹⁰. Provision is made for the payment of fees and allowances to such persons¹¹. The Welsh Ministers may also appoint a secretary to the Welsh Commission¹², and other officers and servants¹³. Provision is made for the terms and conditions of their appointment¹⁴.

The expenses of the Welsh Commission including the salaries, fees and allowances of its members, the remuneration and any expenses paid to an assistant commissioner, the remuneration and any expenses paid to the secretary and other officers and servants, together with the fees and allowances paid to persons appointed to assist and advise the Welsh Commission¹⁵, must be defrayed out of moneys provided by the National Assembly for Wales¹⁶.

At any meeting of the Welsh Commission the quorum is two¹⁷. All acts done at a meeting of the Welsh Commission, notwithstanding that it is afterwards discovered that there was a defect in the appointment of a person purporting to be a member of the Welsh Commission, are as valid as if the defect had not existed¹⁸. The procedure of the Welsh Commission at and in connection with its meetings is to be such as it may from time to time determine¹⁹. Every document purporting to be an instrument made or issued by the Welsh Commission and to be duly sealed with the seal of the Welsh Commission or to be signed by the secretary or any person authorised to act in that behalf is to be received in evidence and, unless the contrary is proved, is deemed to be an instrument made or issued by the Welsh Commission²⁰.

The Local Government Boundary Commission for Wales may appoint one or more of its members to hold any local inquiry²¹ or to carry out any consultation or investigation which the Welsh Commission is required or authorised to hold or carry out under the Local Government Act 1972²², and to report to the Welsh Commission accordingly²³. At the request of the Welsh Commission, the Welsh Ministers may appoint one or more persons as assistant commissioners for all or any of these purposes²⁴.

1 See the Local Government Act 1972 s 53(1).

2 See PARA 79 et seq.

3 As to the meaning of 'local government area' in relation to Wales see PARA 22. As to the meaning of 'Wales' see PARA 1 note 1.

4 See PARA 78. The Welsh Commission has the function of making proposals arising out of a review by a district council in addition to making proposals on its own review: see PARA 80.

5 Local Government Act 1972 Sch 8 para 1(1). The common seal of the Welsh Commission is authenticated by the signature of a member or of some other person authorised in that behalf by the Welsh Commission: Sch 8 para 1(4).

6 Local Government Act 1972 Sch 8 para 1(2).

7 As to the Welsh Ministers see PARA 97.

8 Local Government Act 1972 Sch 8 para 1(3).

9 There is to be paid to each member of the Welsh Commission such salary or fees and allowances as may from time to time be determined: see the Local Government Act 1972 Sch 8 para 2. The Local Government Act 1972 refers to the Minister for the Civil Service, but functions under s 65 (see the text and notes 21-24) and Sch 8 were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

10 Local Government Act 1972 Sch 8 para 3(1).

11 There is to be paid to persons appointed under the Local Government Act 1972 Sch 8 para 3 such fees and allowances as may from time to time be determined by the Welsh Ministers with the consent of the Treasury: Sch 8 para 3(2).

12 Local Government Act 1972 Sch 8 para 7(1). Before appointing a person to be a secretary to the Welsh Commission, the Welsh Ministers must consult with the Welsh Commission: Sch 8 para 7(2).

13 The Welsh Ministers may appoint such other officers and servants as it may, with the approval of the Treasury determine: see the Local Government Act 1972 Sch 8 para 7(1).

14 The terms and conditions of appointment of any person appointed under the Local Government Act 1972 Sch 8 para 7 are to be determined by the Welsh Ministers with the approval of the Treasury: Sch 8 para 7(3).

15 The persons appointed under the Local Government Act 1972 Sch 8 para 3: see the text and notes 10-11.

16 Local Government Act 1972 Sch 8 para 8 (amended by the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 paras 1, 59, Sch 18; and SI 1999/672).

17 Local Government Act 1972 Sch 8 para 4.

18 Local Government Act 1972 Sch 8 para 5.

19 Local Government Act 1972 Sch 8 para 6. This is subject to Sch 8 paras 1-5 and to the provisions of, and of any regulations made or directions given under, Pt IV (ss 53-78).

20 Local Government Act 1972 Sch 8 para 9(1). Prima facie evidence of any such instrument may in any legal proceedings be given by the production of a document purporting to be certified by or on behalf of the secretary of the Welsh Commission to be a true copy of the instrument: Sch 8 para 9(2).

21 As to local inquiries see PARA 85.

22 Local Government Act 1972 s 65(1)(a) (s 65(1), (2) amended by the Local Government Act 1992 s 27(1), Sch 3 para 15).

23 Local Government Act 1972 s 65(1)(b) (as amended: see note 22).

24 Local Government Act 1972 s 65(2) (as amended: see note 22). Such an appointment is for such period or purposes as may be specified in the terms of his appointment (see s 65(3)(a)), and is on such terms and conditions as to remuneration and otherwise as may be determined by the Welsh Ministers with the approval of the Treasury (see s 65(3)(b)). See also note 9.

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78. Proposals which the Local Government Boundary Commission for Wales may make.

The Local Government Boundary Commission for Wales¹ may in consequence of a review conducted by it,² or by a principal council,³ make proposals to the Welsh Ministers⁴ for effecting changes appearing to it desirable in the interests of effective and convenient local government by any of the following means, or any combination of them⁵:

- 134 (1) the alteration of a local government area⁶;
- 135 (2) the constitution of a new⁷ local government area by: (a) amalgamating two or more principal areas⁸ or two or more communities⁹; (b) aggregating parts of principal areas or parts of communities¹⁰; or (c) separating part of a principal area or part of a community¹¹;
- 136 (3) the abolition of a principal area and its distribution among other principal areas¹²;
- 137 (4) the abolition of a community and its distribution among other areas of the like description¹³;
- 138 (5) the constitution of a new community by: (a) the establishment as a community of any area which is not already a community or part of one¹⁴; or (b) the aggregation of the whole or any part of any such area with one or more communities or parts of communities¹⁵;
- 139 (6) a change of electoral arrangements¹⁶ for any local government area which is either consequential on any change in local government areas proposed under the above provisions or is a change which is independent of any change in local government areas so proposed (a 'substantive change')¹⁷;
- 140 (7) a change in police areas (including a change resulting in a reduction or increase in the number of police areas) in connection with a change in local government areas¹⁸.

Where a change is proposed, proposals for consequential changes may also be made¹⁹.

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 le under the Local Government Act 1972 Pt IV (ss 53-78). As to reviews see PARA 79 et seq.

3 As to the meaning of 'principal council' see PARA 23. As to reviews by principal councils see PARA 80.

4 As to the Welsh Ministers see PARA 97.

5 See the Local Government Act 1972 s 54(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 7).

6 Local Government Act 1972 s 54(1)(a). As to the meaning of 'local government area' in relation to Wales see PARA 22. The Welsh Commission may, in consequence of a review conducted by it under Pt IV (ss 46-78), make proposals to the Welsh Ministers for effecting changes in the area of a preserved county which appear to the Welsh Commission to be desirable having regard, in particular, to the purposes for which the preserved counties are retained: s 54(1A) (added by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 4, Sch 15 paras 1, 7). As to the meaning of 'preserved county' see PARA 1 note 1.

7 As to the meaning of 'new' see PARA 10 note 7.

8 As to the meaning of 'principal area' see PARA 23. Where the Welsh Commission makes proposals for the constitution of a new principal area, those proposals must specify whether the new area should be a county or county borough: Local Government Act 1972 s 54(1B) (added by the Local Government (Wales) Act 1994 Sch 2 para 4, Sch 15 paras 1, 7).

9 Local Government Act 1972 s 54(1)(b)(i) (s 54(1)(b) substituted by the Local Government (Wales) Act 1994 Sch 15 paras 1, 7). As to communities see PARA 41 et seq.

10 Local Government Act 1972 s 54(1)(b)(ii) (as substituted: see note 9).

11 Local Government Act 1972 s 54(1)(b)(iii) (as substituted: see note 9).

12 Local Government Act 1972 s 54(1)(c) (s 54(1)(c) substituted by the Local Government (Wales) Act 1994 Sch 15 paras 1, 7).

13 Local Government Act 1972 s 54(1)(cc) (s 54(1)(cc) added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 7).

14 Local Government Act 1972 s 54(1)(d)(i).

15 Local Government Act 1972 s 54(1)(d)(ii).

16 As to the meaning of 'electoral arrangements' in relation to a principal area see PARA 83; and as to the meaning of 'electoral arrangements' in relation to a community see PARA 84 note 3.

17 Local Government Act 1972 s 54(1)(e) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 7). See also the Local Government Act 1972 s 78(1) (amended by the Local Government Act 1992 s 27(1), Sch 3 para 18). However, the Welsh Commission must not make any proposals to the Welsh Ministers under the Local Government Act 1972 s 54 for a substantive change of electoral arrangements for a community except in accordance with s 57(7) (see PARA 84): s 54(2).

18 Local Government Act 1972 s 54(1)(f) (added by the Police and Magistrates' Courts Act 1994 s 40). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

19 See the Local Government Act 1972 s 55(5); and PARA 79.

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79. Review by the Local Government Boundary Commission for Wales.

The Local Government Boundary Commission for Wales¹ is under a general duty to keep under review all principal areas² in Wales for the purpose of considering whether or not to make proposals for change in relation to them³ and what proposals, if any, to make⁴. Unless to do so would in its opinion impede the proper discharge of its functions, the Welsh Commission must consider any request made to it by any local authority⁵ appearing to the Welsh Commission to be interested in any such principal area requesting the Welsh Commission to make such proposals⁶. In either case, the Welsh Commission must, if it thinks fit, formulate proposals accordingly⁷. If, in conducting a review under these provisions, the Welsh Commission intends to make proposals for a change in local government areas, it must also consider whether or not to make further proposals⁸ in consequence of that change⁹.

A review for the purpose of making proposals for a substantive change¹⁰ of electoral arrangements¹¹ may not be conducted under these provisions¹².

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 As to the meaning of 'principal area' see PARA 23.

3 I.e. such proposals as are authorised by the Local Government Act 1972 s 54: see PARA 78.

4 Local Government Act 1972 s 55(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 8).

5 As to the meaning of 'local authority' see PARA 23.

6 Local Government Act 1972 s 55(1) (as amended: see note 4).

7 Local Government Act 1972 s 55(1) (as amended: see note 4).

8 I.e. proposals for any of the following: (1) the constitution of a council for a community or a group of such communities (Local Government Act 1972 s 55(5)(a) (amended by the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 8, Sch 18)); (2) the dissolution of a community council, whether separate or common (Local Government Act 1972 s 55(5)(b)); (3) the separation of a community from a group of communities having a common community council (s 55(5)(c)); (4) the addition of a community to a group of communities having a common community council (s 55(5)(d)); (5) the making of provision for electoral arrangements for any

community or group of communities which is consequential on any change proposed under heads (1)-(4) (s 55(5)(e)); (6) the alteration of the boundaries of any preserved county (s 55(5)(f) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 8)). As to the meaning of 'electoral arrangements' in relation to a community see PARA 84 note 3. As to reviews for the purpose of making proposals for substantive changes of electoral arrangements for communities see PARA 84. As to the meaning of 'preserved county' see PARA 1 note 1.

9 Local Government Act 1972 s 55(5). The provisions of s 55(1)-(3) (see the text and notes 1-7; and PARA 80) apply in relation to proposals for any of these matters as they apply in relation to proposals authorised by s 54 (see PARA 78); see s 55(5).

10 As to the meaning of 'substantive change' see PARA 78 head (6).

11 As to reviews for the purpose of making proposals for substantive changes of electoral arrangements for principal areas see PARA 83.

12 See the Local Government Act 1972 s 57(1); and PARAS 83-84.

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80. Review of communities by principal councils.

It is the duty of each Welsh principal council¹ to keep the whole of its area under review for the purpose of considering whether or not to make recommendations to the Local Government Boundary Commission for Wales² for proposals³ with respect to the constitution of new communities⁴, the abolition of communities or the alteration of communities in its area, and what recommendations, if any, to make⁵. Unless to do so would in its opinion impede the proper discharge of its functions, the principal council must consider any request made with respect to any of these matters by any community council or community meeting⁶ appearing to the principal council to be interested⁷. The principal council must from time to time report to the Welsh Commission accordingly⁸.

The Welsh Commission must consider any such report with respect to any principal area⁹ in Wales and, if it thinks fit, may make the proposals recommended, either as submitted or with modifications¹⁰. However, if the Welsh Commission is of the opinion that the proposals recommended are not (as submitted or with modifications) apt for securing effective and convenient local government in that principal area or the principal council has reported that it will not recommend the Welsh Commission to make proposals, then the Welsh Commission may itself review the whole or part of that principal area for the purpose of considering whether or not to make proposals in relation to it and what proposals, if any, to make¹¹. If it thinks fit, the Welsh Commission may formulate proposals accordingly¹².

If, in conducting a review under these provisions, the Welsh Commission or a principal council intends to make, or recommend the making of, proposals for a change in local government areas¹³, it must also consider whether or not to make or recommend the making of further proposals¹⁴ in consequence of that change¹⁵.

A review for the purpose of making proposals for a substantive change¹⁶ of electoral arrangements¹⁷ may not be conducted under these provisions¹⁸.

1 As to the meaning of 'principal council' see PARA 23. As to areas and authorities in Wales see PARA 37 et seq.

2 As to the Local Government Boundary Commission for Wales see PARA 77.

3 I.e. such proposals as are authorised by the Local Government Act 1972 s 54: see PARA 78.

- 4 As to the meaning of 'new' see PARA 10 note 7. As to communities see PARA 41 et seq.
- 5 Local Government Act 1972 s 55(2) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 8). The Welsh Commission must also conduct a review when land is designated under the New Towns Act 1965 s 1 (repealed: see now the New Towns Act 1981 s 1; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1315 et seq) as, or as an extension of, a new town and the area of the new town is not wholly comprised within one principal area: see the Local Government Act 1972 s 55(4) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 8).
- 6 As to community councils see PARA 41 et seq; and as to community meetings see PARA 46.
- 7 Local Government Act 1972 s 55(2) (as amended: see note 5).
- 8 Local Government Act 1972 s 55(2) (as amended: see note 5).
- 9 As to the meaning of 'principal area' see PARA 23.
- 10 Local Government Act 1972 s 55(3) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 8).
- 11 Local Government Act 1972 s 55(3) (as amended: see note 10).
- 12 Local Government Act 1972 s 55(3) (as amended: see note 10).
- 13 As to the meaning of 'local government area' in relation to Wales see PARA 22.
- 14 The proposals for any of the following: (1) the constitution of a council for a community or a group of such communities (Local Government Act 1972 s 55(5)(a) (amended by the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 8, Sch 18)); (2) the dissolution of a community council, whether separate or common (Local Government Act 1972 s 55(5)(b)); (3) the separation of a community from a group of communities having a common community council (s 55(5)(c)); (4) the addition of a community to a group of communities having a common community council (s 55(5)(d)); (5) the making of provision for electoral arrangements for any community or group of communities which is consequential on any change proposed under heads (1)-(4) (s 55(5)(e)); (6) the alteration of the boundaries of any preserved county (s 55(5)(f) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 8)). As to the meaning of 'electoral arrangements' in relation to a community see PARA 84 note 3. As to the meaning of 'preserved county' see PARA 1 note 1.
- 15 Local Government Act 1972 s 55(5) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 8). The provisions of the Local Government Act 1972 s 55(1)-(3) (see the text and notes 1-12; and PARA 79) apply in relation to proposals for any of these matters as they apply in relation to proposals authorised by s 54 (see PARA 78) and recommendations for such proposals: see s 55(5).
- 16 As to the meaning of 'substantive change' see PARA 78 head (6).
- 17 As to reviews for the purpose of making proposals for substantive changes of electoral arrangements for communities see PARA 84.
- 18 See the Local Government Act 1972 s 57(1); and PARAS 83-84.

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81. Power to direct the holding of reviews.

The Welsh Ministers¹ may direct the Local Government Boundary Commission for Wales² to conduct a review of:

- 141 (1) Wales as a whole³;
- 142 (2) any one or more local government areas⁴ or parts of such areas in Wales⁵; or
- 143 (3) any one or more preserved counties⁶ or parts of such counties⁷,

for the purpose of considering whether or not to make proposals⁸ in relation to the area reviewed and what proposals, if any, to make⁹. The Welsh Commission must, if it thinks fit, formulate such proposals accordingly¹⁰.

The Welsh Ministers may, at the request of the Welsh Commission or otherwise, direct a principal council¹¹ in Wales to conduct a review of the whole or any part of its area for the purpose of considering whether or not to make recommendations to the Welsh Commission for proposals¹² with respect to the constitution of new communities¹³, the abolition of communities or the alteration of communities in its area and what recommendations, if any, to make, and to report to the Welsh Commission accordingly within a period specified in the direction¹⁴. The Welsh Commission must consider any such report made with reference to any principal area¹⁵ in Wales and, if it thinks fit, make the proposals recommended, either as submitted to it or with modifications¹⁶. However, if the Welsh Commission is of the opinion that the proposals recommended are not (as submitted or with modifications) apt for securing effective and convenient local government in that principal area or the principal council has reported that it will not recommend the Welsh Commission to make proposals, then the Welsh Commission may itself review the whole or part of that principal area for the purpose of considering whether or not to make proposals¹⁷ in relation to it and what proposals, if any, to make¹⁸. If it thinks fit, the Welsh Commission may formulate such proposals accordingly¹⁹. Where a principal council fails to submit a report to the Welsh Commission within the specified period, the Welsh Ministers may direct the Welsh Commission to conduct the review which the principal council was directed to conduct for the purpose of considering whether or not to make any proposals and what, if any, proposals to make²⁰. If it thinks fit, the Welsh Commission must formulate proposals accordingly²¹.

If, in conducting a review under these provisions, the Welsh Commission or a principal council intends to make, or recommend the making of, proposals for a change in any areas, it must also consider whether or not to make or recommend the making of further proposals²² in consequence of that change²³.

A review for the purpose of making proposals for a substantive change²⁴ of electoral arrangements²⁵ may not be conducted under these provisions²⁶.

1 As to the Welsh Ministers see PARA 97.

2 As to the Local Government Boundary Commission for Wales see PARA 77.

3 Local Government Act 1972 s 56(1)(a) (s 56(1) substituted by the Local Government (Wales) Act 1994 ss 1(3), 66(5), Sch 2 para 5, Sch 15 paras 1, 9).

4 As to the meaning of 'local government area' see PARA 22.

5 Local Government Act 1972 s 56(1)(b) (as substituted: see note 3).

6 As to the meaning of 'preserved county' see PARA 1 note 1.

7 Local Government Act 1972 s 56(1)(c) (as substituted: see note 3).

8 Ie such proposals as are authorised by the Local Government Act 1972 s 54: see PARA 78.

9 Local Government Act 1972 s 56(1) (as substituted: see note 3).

10 Local Government Act 1972 s 56(1) (as substituted: see note 3).

11 As to the meaning of 'principal council' see PARA 23.

12 Ie such proposals as are authorised by the Local Government Act 1972 s 54: see PARA 78.

13 As to communities see PARA 41 et seq.

14 Local Government Act 1972 s 56(2) (amended by the Local Government (Wales) Act 1994 Sch 2 para 5, Sch 15 paras 1, 9).

15 As to the meaning of 'principal area' see PARA 23.

16 Local Government Act 1972 s 56(3) (amended by the Local Government (Wales) Act 1994 Sch 2 para 5, Sch 15 paras 1, 9).

17 In such proposals as are authorised by the Local Government Act 1972 s 54: see PARA 78.

18 Local Government Act 1972 s 56(3) (as amended: see note 16).

19 Local Government Act 1972 s 56(3) (as amended: see note 16).

20 Local Government Act 1972 s 56(4) (amended by the Local Government (Wales) Act 1994 Sch 2 para 5, Sch 15 paras 1, 9).

21 Local Government Act 1972 s 56(4) (as amended: see note 20).

22 In proposals for any such matters as are mentioned in the Local Government Act 1972 s 55(5): see PARA 80 note 14.

23 See the Local Government Act 1972 s 56(5) (amended by the Local Government (Wales) Act 1994 Sch 2 para 5, Sch 15 paras 1, 9). The provisions of the Local Government Act 1972 s 55(1)-(3) (see PARAS 79-80) apply in relation to such proposals and recommendations as they apply in relation to proposals authorised by s 54 (see PARA 78) and recommendations for such proposals: see s 56(5) (as so amended).

24 As to the meaning of 'substantive change' see PARA 78 head (6).

25 As to the meaning of 'electoral arrangements' see PARAS 83 note 2, 84 note 3. As to reviews for the purpose of making proposals for substantive changes of electoral arrangements see PARAS 83-84.

26 See the Local Government Act 1972 s 57(1); and PARAS 83-84.

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82. Modification of seaward boundaries of local government areas.

The Local Government Boundary Commission for Wales¹ may at any time review so much of the boundary of any area² as lies below the high-water mark of medium tides³ and does not form a common boundary with another area and may make proposals to the Welsh Ministers⁴ for altering any part of the boundary so as to include in the area any area of the sea which at the date of the proposals is not, in whole or in part, comprised in any other area or to exclude from the area any area of the sea which at that date is comprised in the area⁵. The Welsh Ministers may direct the Welsh Commission to conduct a review of a particular boundary or not to undertake during a specified period such a review of a particular boundary, and may give the Welsh Commission directions for its guidance in conducting a review and making proposals under these provisions⁶.

If it thinks fit, the Welsh Ministers may by order give effect to any such proposals either as submitted to it or with modifications⁷. No such order may be made extending any area into England⁸.

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 In the Local Government Act 1972 s 71, 'area' (except in 'area of the sea') means any local government area in Wales and any preserved county: s 71(6) (added by the Local Government (Wales) Act 1994 s 66(5), Sch

15 para 17). As to the meaning of 'local government area' see PARA 22. As to the meaning of 'preserved county' see PARA 1 note 1.

3 See **WATER AND WATERWAYS** vol 100 (2009) PARA 37.

4 As to the Welsh Ministers see PARA 97.

5 Local Government Act 1972 s 71(1) (amended by the Local Government Act 1992 s 27(1), Sch 3 para 16; and the Local Government (Wales) Act 1994 Sch 15 para 17). The provisions of the Local Government Act 1972 s 60(1), (2), (5)-(7) (see PARA 85) apply in relation to a review under s 71 as they apply in relation to a review under ss 53-59 (see PARA 77 et seq): s 71(3).

6 Local Government Act 1972 s 71(2) (amended by the Local Government Act 1992 Sch 3 para 16).

7 Local Government Act 1972 s 71(4). Orders under s 71, being local in nature, are not noted in this work.

8 Local Government Act 1972 s 71(7) (added by the Local Government (Wales) Act 1994 Sch 15 para 17).

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83. Electoral arrangements for principal areas.

The Local Government Boundary Commission for Wales¹ has the power to review the electoral arrangements² for every principal area in Wales for the purpose of considering whether or not to make proposals to the Welsh Ministers³ for substantive changes to those arrangements⁴ and, if it thinks fit, the Welsh Commission may formulate such proposals accordingly⁵. This power must be exercised following the completion by the Welsh Commission of the initial review⁶ but may also be exercised at any time, whether at the request of a local authority or not⁷.

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 'Electoral arrangements', in relation to a Welsh principal area, means the number of councillors of the council for that area, the number and boundaries of the electoral areas into which that area is for the time being divided for the purpose of the election of councillors, the number of councillors to be elected for any electoral area in that principal area and the name of any electoral area: Local Government Act 1972 s 78(1)(a). 'Electoral area' means any area for which councillors are elected to any local authority: s 270(1). As to the meaning of 'local authority' see PARA 23.

3 As to the Welsh Ministers see PARA 97.

4 See the Local Government Act 1972 s 57; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 97. As to the meaning of 'substantive change' see PARA 78 head (6).

5 See the Local Government Act 1972 s 57(2), (3); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 97.

6 An initial review had to be carried out as soon as practicable after the ordinary election of councillors for any of the Welsh principal areas held in 1995: see the Local Government Act 1972 s 64 (substituted by the Local Government (Wales) Act 1994 s 6 and repealed by the Statute Law (Repeals) Act 2004). As to the meaning of 'principal area' see PARA 23. As to the election of councillors see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS**.

Bodies considering the electoral arrangements for the purposes of Pt IV (ss 53-78) must so far as is reasonably practicable comply with the rules set out in s 78, Sch 11: see s 78(2) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt II para 42; the Local Government Act 1992 s 27(1), Sch 3 para 18; and the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 22). As to the rules to be observed in relation to electoral arrangements for elections of councillors for principal areas in Wales see the Local Government Act 1972 Sch 11 para 1A (added by the Local Government (Wales) Act 1994 s 7).

7 See the Local Government Act 1972 s 57(2); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 97. Reviews for the purpose of making proposals for a substantive change of electoral arrangements may not be conducted under the Local Government Act 1972 s 55 (see PARAS 79-80) or s 56 (see PARA 81): see s 57(1); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 97.

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84. Electoral arrangements for communities.

Each principal council¹ in Wales² must keep under review the electoral arrangements³ for the communities⁴ in its area for the purpose of considering whether or not to make substantive changes⁵ in those arrangements and what changes, if any, to make⁶. The principal council may, if it thinks fit, make an order giving effect to those changes⁷.

When requested to do so, the Local Government Boundary Commission for Wales⁸ may similarly review the electoral arrangements for a community and, if it thinks fit, formulate proposals to the principal council for an order changing those arrangements⁹. The principal council may make the order proposed or, with the agreement of the Welsh Commission, make an order with modifications suggested by the principal council¹⁰. If the principal council informs the Welsh Commission that in its opinion the order proposed should not be made the Welsh Commission may refer the matter to the Welsh Ministers¹¹ who may by order give effect to the proposals either as submitted or with modifications¹².

1 As to the meaning of 'principal council' see PARA 23.

2 As to the meaning of 'Wales' see PARA 1 note 1.

3 'Electoral arrangements', in relation to a community council or a common community council, means the number of councillors, the question whether the community or any community, as the case may be, should or should not be or continue to be divided into wards for the purpose of the election of councillors, the number and boundaries of any such wards, the number of councillors to be elected for any such ward or, in the case of a common community council for each community, and the name of any such ward: Local Government Act 1972 s 78(1)(b).

Bodies considering the electoral arrangements for the purposes of Pt IV (ss 53-78) must so far as is reasonably practicable comply with the rules set out in s 78, Sch 11: see s 78(2) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt II para 42; the Local Government Act 1992 s 27(1), Sch 3 para 18; and the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 22). As to the rules to be observed in relation to electoral arrangements for a community see the Local Government Act 1972 Sch 11 para 4; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 94, 99.

4 As to communities see PARA 41 et seq.

5 As to the meaning of 'substantive change' see PARA 78 head (6).

6 See the Local Government Act 1972 s 57(4), (5); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 98. Reviews for the purpose of making proposals for a substantive change of electoral arrangements may not be conducted under the Local Government Act 1972 s 55 (see PARAS 79-80) or s 56 (see PARA 81): see s 57(1).

7 See the Local Government Act 1972 s 57(4); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 98. Such orders, being local in nature, are not noted in this work.

8 As to the Local Government Boundary Commission for Wales see PARA 77.

9 See the Local Government Act 1972 s 57(5); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 98.

10 See the Local Government Act 1972 s 57(6); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 98.

11 See the Local Government Act 1972 s 57(7); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 98. As to the Welsh Commission's reports see PARA 86.

12 See PARA 86.

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85. Procedure for reviews.

The Local Government Boundary Commission for Wales¹ or a Welsh principal council² proposing to conduct a review³ must take such steps as it thinks fit to secure that persons who may be interested in the review are informed of the proposal to conduct it and of any relevant directions of the Welsh Ministers⁴.

In conducting a review the Welsh Commission or Welsh principal council must⁵:

- 144 (1) consult: (a) the council of any local government area⁶ and the police authority for any police area⁷ affected by the review, and such other local authorities⁸ and public bodies as appear to it to be concerned⁹; (b) any bodies representative of staff employed by local authorities who have asked the Welsh Commission or the principal council, as the case may be, to be consulted¹⁰; and (c) such other persons as it thinks fit¹¹;
- 145 (2) take such steps as it thinks fit for securing that persons who may be interested in the review are informed of any draft proposals or recommendations, any draft orders¹² or any interim decisions not to make proposals, recommendations or orders, and of the place or places where these documents can be inspected¹³;
- 146 (3) deposit copies of those proposals, recommendations, orders or decisions at the offices of any principal council or police authority whose area may be affected, and require those copies to be kept available for inspection for a period specified in the requirement¹⁴; and
- 147 (4) take into consideration any representations made to it within that period¹⁵.

In considering any recommendations made by a Welsh principal council in consequence of a review¹⁶, the Welsh Commission may consult the council of any local government area affected by the review, such other local authorities and public bodies as appear to it to be concerned and such other persons as it thinks fit¹⁷.

Where the Welsh Commission proposes to modify any proposals recommended by a Welsh principal council, or not to submit any such proposals, it must: (i) take such steps as it thinks fit for securing that persons who may be interested in any modification or decision are informed of it and of the place or places where it can be inspected¹⁸; (ii) deposit copies of any draft modification or the decision at the offices of the principal council and of any other principal council whose area may be affected, and require the copies to be kept available for inspection for a period specified in the requirement¹⁹; and (iii) take into consideration any representations which may be made to it with respect to any such modification or decision within that period²⁰.

Where the Welsh Commission makes a report, proposals or recommendations²¹, it must take such steps as it thinks fit for securing that persons who may be interested in the report, proposals or recommendations are informed of the report, proposals or recommendations and

of the place or places where they can be inspected²². In particular, the Welsh Commission must deposit copies of the report, proposals or recommendations at the offices of any principal council or police authority whose area may be affected, and require the copies to be kept available for inspection²³. Where a Welsh principal council makes a report, proposals or recommendations²⁴ it must make copies of the report, proposals or recommendations available for inspection at its offices²⁵, and it must take steps and comply with requirements similar to those required of the Welsh Commission²⁶.

The Welsh Ministers may make regulations prescribing the procedure by which the Welsh Commission or, as the case may be, a Welsh principal council is to conduct a review, or by which the Welsh Commission is to consider recommendations of a Welsh principal council²⁷.

Subject to these provisions, and to any regulations made under them, the procedure of the Welsh Commission or a Welsh principal council in conducting a review and the procedure of the Welsh commission in considering recommendations is to be such as the Welsh Commission or the Welsh principal council may determine²⁸. However, the Welsh Ministers may give the Welsh Commission, or a principal council in Wales, directions for guidance in conducting reviews²⁹ and making proposals or recommendations or considering substantive changes³⁰ in electoral arrangements³¹ in consequence of them, and the directions may relate to all such reviews or to any particular review or class of review³².

The Welsh Commission or a Welsh principal council may cause a local inquiry to be held with respect to any review³³.

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 As to the meaning of 'principal council' see PARA 23.

3 Ie under the Local Government Act 1972 ss 53-59: see PARA 77 et seq.

4 Local Government Act 1972 s 60(1) (amended by the Local Government Act 1992 s 27(1), Sch 3 para 13; and the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 13). As to the Welsh Ministers see PARA 97.

5 Local Government Act 1972 s 60(2) (amended by the Local Government Act 1992 s 29(2), Sch 3 para 13, Sch 4 Pt II; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 13).

6 As to the meaning of 'local government area' see PARA 22.

7 As to police areas and authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

8 As to the meaning of 'local authority' see PARA 23.

9 Local Government Act 1972 s 60(2)(a)(i) (s 60(2) as amended (see note 5); and s 60(2)(a)(i) amended by the Police and Magistrates' Courts Act 1994 s 40).

10 Local Government Act 1972 s 60(2)(a)(ii) (as amended: see note 5).

11 Local Government Act 1972 s 60(2)(a)(iii) (as amended: see note 5).

12 Ie under the Local Government Act 1972 s 57(4): see PARA 84.

13 See the Local Government Act 1972 s 60(2)(b) (as amended: see note 5).

14 See the Local Government Act 1972 s 60(2)(c) (as amended: see note 5).

15 Local Government Act 1972 s 60(2)(d) (as amended: see note 5).

16 Ie a review conducted by the principal council under the Local Government Act 1972 Pt IV (ss 53-78).

17 Local Government Act 1972 s 60(3) (amended by the Local Government Act 1992 Sch 3 para 13; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 13).

- 18 Local Government Act 1972 s 60(4)(a) (s 60(4) amended by the Local Government Act 1992 Sch 3 para 13; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 13).
- 19 Local Government Act 1972 s 60(4)(b) (as amended: see note 18).
- 20 Local Government Act 1972 s 60(4)(c) (as amended: see note 18).
- 21 *Ie* under the Local Government Act 1972 Pt IV (ss 46-78).
- 22 Local Government Act 1972 s 60(5)(a) (s 60(5) amended by the Local Government Act 1992 Sch 3 para 13; and the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 13, Sch 18).
- 23 Local Government Act 1972 s 60(5)(b) (s 60(5) as amended (see note 22); and s 60(5)(b) amended by the Police and Magistrates' Courts Act 1994 s 40). The copies must be kept available for inspection until the expiration of six months after the making of an order giving effect (with or without modifications) to the proposals or recommendations or after a notification by the Welsh Commission that it has no proposals to put forward or, as the case may be, by the Welsh Ministers that it does not propose to give effect to the proposals of the Welsh Commission: see the Local Government Act 1972 s 60(5)(b) (as so amended).
- 24 *Ie* under the Local Government Act 1972 Pt IV (ss 46-78).
- 25 Local Government Act 1972 s 60(5A)(a) (s 60(5A) added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 13).
- 26 See the Local Government Act 1972 s 60(5A)(b), (c) (as added: see note 25).
- 27 Local Government Act 1972 s 60(6) (amended by the Local Government Act 1992 Sch 3 para 13; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 13). At the date at which this volume states the law no such regulations had been made.
- 28 Local Government Act 1972 s 60(7) (amended by the Local Government Act 1992 Sch 3 para 13; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 13).
- 29 *Ie* under the Local Government Act 1972 s 55 (see PARAS 79-80), s 56 (see PARA 81) or s 57 (see PARAS 83-84).
- 30 As to the meaning of 'substantive change' see PARA 78 head (6).
- 31 As to the meaning of 'electoral arrangements' see PARAS 83 note 2, 84 note 3.
- 32 Local Government Act 1972 s 59(1) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 12). Such a direction may not be given with respect to all reviews, reviews of any class or a single review of the principal areas in Wales except after consultation with associations appearing to the Welsh Ministers to be representative of local authorities: Local Government Act 1972 s 59(2) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 12, Sch 18). As to the meaning of 'principal area' see PARA 23.
- The Welsh Ministers may give directions to the Welsh Commission with respect to the order in which areas or electoral arrangements are to be reviewed by it under any provision of the Local Government Act 1972 s 55 (see PARAS 79-80) or s 56 (see PARA 81): s 59(3).
- 33 Local Government Act 1972 s 61(1) (amended by the Local Government Act 1992 Sch 3 para 14; and the Local Government (Wales) Act 1994 Sch 15 paras 1, 14). The provisions of the Local Government Act 1972 s 250(2), (3), (5) (see PARA 105) apply in relation to any such inquiry with the substitution for references to a minister of references to the Welsh Commission or Welsh principal council causing the inquiry to be held: s 61(2) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 14).

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86. Implementation of reports of the Local Government Boundary Commission for Wales.

Where the Local Government Boundary Commission for Wales¹:

148 (1) has been² conducting a review of any area or considering any recommendations made by a principal council³; or

149 (2) has been⁴ conducting a review of electoral arrangements⁵ on which it has a power or duty to formulate proposals to, or submit a report to, the Welsh Ministers⁶,

and in either case is of the opinion that it is in a position to submit to the Welsh Ministers a report on the review or any part of it or any of the recommendations, it must submit a report to the Welsh Ministers on the review or that part or those recommendations, together with the proposals it has formulated thereon, or, as the case may be, a notification that it has no proposals to put forward thereon⁷.

The Welsh Ministers may if they think fit by order give effect to any proposals made to them by the Welsh Commission, either as submitted to them or with modifications⁸. If, in relation to any area, the Welsh Ministers decide to make an order under these provisions giving effect with modifications to proposals made to them by the Welsh Commission, the Welsh Ministers may, if they think fit, direct the Welsh Commission to conduct a further review of that area or, as the case may be, of its electoral arrangements and to make revised proposals with respect to that area or those arrangements within a time specified in the direction⁹.

1 As to the Local Government Boundary Commission for Wales see PARA 77.

2 In accordance with the Local Government Act 1972 s 55 (see PARAS 79-80) or s 56 (see PARA 81).

3 Local Government Act 1972 s 58(1)(a) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 11). As to the meaning of 'principal council' see PARA 23.

4 In accordance with the Local Government Act 1972 s 57: see PARAS 83-84.

5 As to the meaning of 'electoral arrangements' see PARAS 83 note 2, 84 note 3.

6 Local Government Act 1972 s 58(1)(b). As to the Welsh Ministers see PARA 97.

7 Local Government Act 1972 s 58(1).

8 Local Government Act 1972 s 58(2). An order giving effect to any such proposals may not be made until after the expiry of six weeks from the day on which those proposals were submitted to the Welsh Ministers: s 58(2) proviso.

The power to make orders under s 58 must be exercised in relation to police areas in such a way as to ensure that no county or county borough is divided between two or more police areas: s 58(3A) (added by the Police and Magistrates' Courts Act 1994 s 40). As to counties and county boroughs in Wales see PARA 37.

Orders under the Local Government Act 1972 s 58, being local in nature, are not noted in this work.

9 Local Government Act 1972 s 58(3).

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87. Supplementary regulations and orders.

The Welsh Ministers¹ may by regulations of general application make such incidental, consequential, transitional or supplementary provision as appear to them necessary or proper for the purposes or in consequence of orders implementing changes in local government areas²

and electoral arrangements³ or for giving full effect to them⁴. Such regulations may in particular include the transfer and management or custody of real or personal property and the transfer of rights and liabilities⁵, the functions and areas of jurisdiction of public and judicial bodies⁶ and their costs and expenses⁷ and the transfer of legal proceedings⁸, and may apply, modify, extend, exclude, amend, repeal or revoke any provision of an Act, an instrument made under an Act, or a charter⁹.

An order under Part IV of the Local Government Act 1972¹⁰ may provide for the above matters¹¹, and may also include provision for: (1) the name of any altered area¹²; (2) the constitution, election and membership of public bodies in affected areas¹³; (3) the total number of councillors, their apportionment among electoral areas¹⁴, the assignment of existing¹⁵ councillors to new¹⁶ or altered electoral areas and the first election of councillors for any new or altered electoral area¹⁷; (4) the holding of a fresh election of councillors for all electoral areas in the local government area in question in a case where substantial changes have been made to some of those areas¹⁸; (5) the order of retirement of councillors¹⁹; and (6) the abolition or establishment, or the restriction or extension, of the jurisdiction of any public body in or over any part of the area affected by the order²⁰.

Any supplementary provision²¹ contained in an order making changes in local government may be varied or revoked by order²².

1 As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'local government area' see PARA 22.

3 As to the meaning of 'electoral arrangements' see PARAS 83 note 2, 84 note 3.

4 Local Government Act 1972 s 67(1). Nothing in any other provision of the Act is to be construed as prejudicing the generality of this provision: see s 67(1).

As to the regulations that have been made under s 67 see the Local Government Area Changes Regulations 1976, SI 1976/246 (amended by the Health and Medicines Act 1988 s 12(1) and SI 1978/247; SI 1989/1968; SI 2002/2469; SI 2005/617); and the Local Government (Changes in Electoral Arrangements) Regulations 1985, SI 1985/110.

5 Local Government Act 1972 s 67(2)(a). The particular provision that may be made under s 67(2) is in addition to the power to make provision for transfer of officers under s 255: see PARA 7.

6 I.e any public body, justice of the peace other than a District Judge (Magistrates' Courts), coroner, custos rotulorum, lord lieutenant, lieutenant, high sheriff and other officers, including police officers, within any area affected by the order: see the Local Government Act 1972 s 67(2)(b) (as amended: see note 7). As to the meaning of 'public body' see PARA 11 note 1. As to justices of the peace see **MAGISTRATES**; as to coroners see **CORONERS**; as to the custos rotulorum see **MAGISTRATES**; as to the lieutenancy see PARAS 115-116; as to sheriffs see **SHERIFFS**; and as to police officers see **POLICE**.

7 Local Government Act 1972 s 67(2)(b) (amended by the Access to Justice Act 1999 s 78(2), Sch 11 para 20).

8 Local Government Act 1972 s 67(2)(c).

9 See the Local Government Act 1972 s 67(2).

10 I.e the Local Government Act 1972 Pt IV (ss 53-78). Note that principal councils have power to make orders: see s 57(4), (6); and PARA 84.

11 Local Government Act 1972 s 67(4). Nothing in any other provision of the Act is to be construed as prejudicing the generality of this provision: see s 67(4).

12 Local Government Act 1972 s 67(5)(a).

13 Local Government Act 1972 s 67(5)(b) (amended by the Police and Magistrates' Courts Act 1994 s 40).

14 As to the meaning of 'electoral area' see PARA 83 note 3.

15 As to the meaning of 'existing' see PARA 6 note 8.

16 As to the meaning of 'new' see PARA 10 note 7.

17 Local Government Act 1972 s 67(5)(c) (substituted by the Local Government Act 1972 (References to Aldermen) Order 1977, SI 1977/1710, art 3(a)).

18 Local Government Act 1972 s 67(5)(d).

19 Local Government Act 1972 s 67(5)(e).

20 Local Government Act 1972 s 67(5)(g).

21 For the purposes of the Local Government Act 1972 s 69, 'supplementary provision' means any such provision as could be made by order under Pt IV (ss 46-78) by virtue of s 67 or s 255 (see PARA 7): s 69(7). The power to make an order revoking or varying stems from s 266.

22 See the Local Government Act 1972 s 69(1). Note that the power conferred by s 266 (see PARA 98) to vary or revoke orders applies, in the case of orders under Pt IV (ss 46-78), only in relation to any supplementary provision contained in any such order: see s 69(1). An order varying or revoking any such provision may only be made after compliance with s 69(2), (3): see s 69(1). The Welsh Ministers or Welsh principal council proposing to make any varying or revoking order must: (1) prepare a draft of the order; (2) send copies to the local or public authorities concerned; and (3) give public notice that the draft has been prepared, that a copy of the draft is available for inspection at a place specified in the notice, and that representations with respect to the draft may be made within two months of the publication of the notice: see s 69(2) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 16). The Welsh Ministers for Wales or Welsh principal council must consider any representations duly made and may make an order either in the form of the draft or subject to modifications: see the Local Government Act 1972 s 69(3) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 16). A local inquiry may be held with respect to the draft and the provisions of the Local Government Act 1972 s 250(2), (3), (5) (see PARA 105) apply in relation to an inquiry held by a Welsh principal council with the substitution for references to a minister of references to the council: s 69(4) (amended by the Local Government (Wales) Act 1994 s 66(8), Sch 15 paras 1, 16, Sch 18).

Such a varying or revoking order may be made in relation to any supplementary provision contained in an order made under earlier similar legislation (ie the Local Government Act 1929 s 46 (repealed), the Local Government Act 1933 Pt VI (ss 129-155) (repealed), the Local Government Act 1958 Pt II (ss 17-45) (repealed), the London Government Act 1963 s 6 (repealed), or any enactment repealed by the Local Government Act 1933 and corresponding to any enactment in Pt VI (repealed)): see the Local Government Act 1972 s 69(5), (6).

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88. Agreements as to property and finance.

From time to time any public bodies¹ affected by changes in local government² may make agreements with respect to any property, income, rights, liabilities and expenses (so far as affected by the changes) of, and any financial relations between, the parties to the agreement³.

The agreement may provide:

150 (1) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property⁴;

151 (2) for the making of payments by either party to the agreement in respect of property, rights and liabilities so transferred or retained, or in respect of such joint use, and in respect of the remuneration or compensation⁵ payable to any person⁶; and

152 (3) for the making of any such payment either by way of a capital sum or by way of a terminable annuity⁷.

In default of agreement as to any matter, the matter must be referred to the arbitration of a single arbitrator agreed on by the parties or in default of agreement appointed by the Welsh Ministers⁸, and the award of the arbitrator may provide for any matter for which an agreement might have provided⁹. An agreement for financial adjustments does not bind the parties in relation to matters not included in it; and if a further matter not provided for in the agreement is subsequently found to exist a claim for the adjustment of it is not bound by the previous agreement¹⁰, although it may be barred by lapse of time¹¹. However, an item wrongly included in the agreement, if entered into in good faith, will not render the agreement invalid and liable to be set aside¹². In the absence of new circumstances, if an agreement is reached and a sum paid in full settlement the adjustment cannot afterwards be reopened¹³.

Any sum required to be paid by a public body in pursuance of an agreement or award under these provisions may be paid out of such fund or rate as may be specified in the agreement or award or, if no fund or rate is specified, either out of the fund or rate from which the body's general expenses are defrayed or out of such fund or rate as the body may direct¹⁴.

For the purposes of paying any capital sum required to be paid by a public body in pursuance of any such agreement or award, a local authority¹⁵ may borrow without the approval of the Welsh Ministers, but the sum must be repaid within such period as the authority with consent of the Welsh Ministers may determine¹⁶. Other public bodies having power to borrow under any enactment or any instrument made under any Act may borrow under that Act or instrument¹⁷, and those not having any such statutory power may be empowered by an order made by the Welsh Ministers to borrow in such manner and in accordance with such conditions as may be provided by the order¹⁸.

Any agreement or award under these provisions which relates to the profits of local taxation licences must, so far as it so relates, be carried out in accordance with regulations made by the Welsh Ministers¹⁹.

1 As to the meaning of 'public body' see PARA 11 note 1.

2 I.e. by the alteration, abolition or constitution of any area by an order under the Local Government Act 1972 Pt IV (ss 53-78): see PARA 77 et seq.

3 Local Government Act 1972 s 68(1).

4 Local Government Act 1972 s 68(2)(a).

5 As to compensation for loss of office see the Local Government Act 1972 s 259; and PARA 7.

6 Local Government Act 1972 s 68(2)(b).

7 Local Government Act 1972 s 68(2)(c).

8 As to the Welsh Ministers see PARA 97.

9 See the Local Government Act 1972 s 68(3). The arbitrator has full authority to decide what are matters for adjustment in the case before him and what are not, and the court's jurisdiction is therefore excluded: see *Re Salop County Council* (1891) 56 JP 213, DC. The Arbitration Act 1996 Pt I (ss 1-84) applies to such an arbitration: see s 94; and **ARBITRATION** vol 2 (2008) PARA 1209 et seq.

10 *Re St Thomas RDC and Heavitree UDC* (1902) 66 JP 597.

11 An action on a claim for financial adjustment or a reference to arbitration is barred after the expiration of six years from the time of the transfer: see the Limitation Act 1980 s 9; *West Riding of Yorkshire County Council v Huddersfield Corpn* [1957] 1 QB 540, [1957] 1 All ER 669; and **LIMITATION PERIODS** vol 68 (2008) PARA 1005.

12 *Holsworthy UDC v Holsworthy RDC* [1907] 2 Ch 62, 5 LGR 791; *A-G v Essex County Council* (1907) 71 JP 557.

13 *Bullington RDC v Oxford Corpn* [1936] 3 All ER 875.

- 14 Local Government Act 1972 s 68(4).
- 15 As to the meaning of 'local authority' see PARA 23.
- 16 Local Government Act 1972 s 68(5)(a).
- 17 Local Government Act 1972 s 68(5)(b).
- 18 Local Government Act 1972 s 68(5)(c).
- 19 Local Government Act 1972 s 68(8). Section 68(8) applies to:
 - 165 (1) an adjustment made under the Local Government Act 1933 s 151 (repealed), whether as originally enacted or as applied by any other enactment or any instrument made under any Act; and
 - 166 (2) an adjustment made under the Local Government Act 1888 s 32 (repealed) or s 62 (repealed), whether as originally enacted or as so applied, and consequent on an alteration of areas effected after 31 March 1930,as it applies in relation to an agreement or award under the Local Government Act 1972 s 68: s 68(9). At the date at which this volume states the law no such regulations had been made under s 68(8).

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(iv) Miscellaneous Provisions

89. Accretions from the sea.

Every accretion from the sea¹, whether natural or artificial, and any part of the sea-shore to the low-water mark² which did not form part of a pre-reorganisation parish³ must be annexed to and incorporated with the parish or parishes in England⁴, and the community or communities in Wales⁵, which the accretion or part of the sea-shore adjoins, in proportion to the extent of the common boundary⁶.

Every accretion from the sea or part of the sea-shore which is annexed to and incorporated with a parish under these provisions must be annexed to and incorporated with the district⁷ and county⁸ in which that parish is situated⁹. In so far as the whole or part of any such accretion from the sea or part of the sea-shore does not adjoin a parish, it must be annexed to and incorporated with the district which it adjoins, or, if it adjoins more than one district, with those districts in proportion to the extent of the common boundary, and every such accretion or part of the sea-shore which is annexed to and incorporated with a district under these provisions must be annexed to and incorporated with the county in which that district is situated¹⁰.

Every accretion from the sea or part of the sea-shore which is annexed to and incorporated with a community under these provisions must be annexed to and incorporated with the principal area¹¹ and the preserved county¹² in which that community is situated¹³.

1 As to the meaning of 'accretion' see **WATER AND WATERWAYS** vol 100 (2009) PARA 37. The Local Government Act 1972 s 72 applies to reclaimed land: see *Barwick v South Eastern and Chatham Rlys Cos* [1921] 1 KB 187, 90 LJKB 377, CA.

2 See **WATER AND WATERWAYS** vol 100 (2009) PARA 37.

3 Ie which did not immediately before the passing of the Local Government Act 1972 (ie 26 October 1972) form part of a parish: see s 72(1). The Local Government Act 1972 abolished parishes in Wales, and introduced a system of communities: see PARAS 5, 41.

- 4 As to parishes in England see PARA 27 et seq.
- 5 As to communities in Wales see PARA 41 et seq.
- 6 Local Government Act 1972 s 72(1).
- 7 As to the meaning of 'district' see PARA 24 note 5.
- 8 As to the meaning of 'county' see PARA 24 note 5.
- 9 Local Government Act 1972 s 72(2) (amended by the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 paras 1, 18, Sch 18).
- 10 Local Government Act 1972 s 72(3).
- 11 As to the meaning of 'principal area' see PARA 23.
- 12 As to the meaning of 'preserved county' see PARA 1 note 1.
- 13 Local Government Act 1972 s 72(2A) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 18).

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90. Alteration of boundaries on alteration of watercourses.

Where, in the exercise of any statutory power¹, a watercourse forming a boundary line between two or more areas of local government² is straightened, widened or otherwise altered so as to affect its character as a boundary line, the drainage board³ or other persons under whose authority the alteration is made must forthwith send notice of the alteration to the Secretary of State or, in relation to Wales, to the Welsh Ministers⁴.

If after consultation with the Electoral Commission⁵ or the Local Government Boundary Commission for Wales⁶, as the case may require, the Secretary of State or the Welsh Ministers is satisfied that, having regard to the alteration specified in the notice, a new boundary line may conveniently be adopted, the Secretary of State or the Welsh Ministers may by order declare a specified line to be substituted for so much of the boundary line as, before the alteration, lay along the line of the watercourse; and where such an order is made the limits of the areas of which the watercourse, before the alteration, was the boundary is deemed to be varied accordingly⁷. Notice of any order made must be published in an appropriate manner⁸.

1 Ie any power conferred by the Water Resources Act 1991, the Land Drainage Act 1991 or any other enactment. See **WATER AND WATERWAYS**.

2 For these purposes, a preserved county is an area of local government: Local Government Act 1972 s 73(4) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 19). As to the meaning of 'preserved county' see PARA 1 note 1. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 As to drainage boards see **WATER AND WATERWAYS**.

4 Local Government Act 1972 s 73(1) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 22). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 As to the Electoral Commission see PARA 56.

6 As to the Local Government Boundary Commission for Wales see PARA 77.

7 See the Local Government Act 1972 s 73(2) (amended by the Local Government Act 1992 s 27(1), Sch 3 para 17). Orders under this provision, being local in nature, are not noted in this work. See, however, the Local Authorities (Miscellaneous Provisions) Order 1975, SI 1975/244, art 5.

8 See the Local Government Act 1972 s 73(3).

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91. Restriction on promotion of Bills relating to local government changes.

No local authority¹ or joint authority or joint waste authority² may promote a Bill³ for forming or abolishing any local government area⁴ or for altering, or altering the status or electoral arrangements⁵ of, any local government area⁶ nor may they promote a Bill for forming, altering or abolishing executive or alternative arrangements, or for altering arrangements for electing an elected mayor⁷.

1 As to the meaning of 'local authority' see PARA 23.

2 The Local Government Act 1972 s 70(1) has effect as if the reference to a joint authority included a reference to the London Fire and Emergency Planning Authority: s 70(2) (added by the Greater London Authority Act 1999 s 328(8), Sch 29 Pt I para 14). As to the meaning of 'joint authority' generally see PARA 47 note 1. 'Joint waste authority' means an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51): Local Government Act 1972 s 207(1) (definition added by the Local Government and Public Involvement in Health Act 2007 Sch 13 para 24).

3 As to the promotion of Bills by local authorities see PARA 572.

4 As to the meaning of 'local government area' see PARA 22.

5 'Electoral arrangements', in relation to an English principal area, means the number of councillors of the council for that area, the number and boundaries of the electoral areas into which that area is for the time being divided for the purpose of the election of councillors, the number of councillors to be elected for any electoral area in that principal area and the name of any electoral area: Local Government Act 1972 s 78(1)(a). 'Electoral area' means any area for which councillors are elected to any local authority: s 270(1). As to the meaning of 'electoral arrangements' in relation to a Welsh principal council see PARA 83 note 3. 'Electoral arrangements', in relation to a parish council or a common parish council, means the number of councillors, the question whether the parish or any parish, as the case may be, should or should not be or continue to be divided into wards for the purpose of the election of councillors, the number and boundaries of any such wards, the number of councillors to be elected for any such ward or, in the case of a common parish council for each parish, and the name of any such ward: s 78(1)(b). As to the meaning of 'electoral arrangements' in relation to communities in Wales see PARA 84 note 3.

6 Local Government Act 1972 s 70(1) (amended by the Local Government Act 1985 s 84, Sch 14 Pt I para 1; the Education Reform Act 1988 s 237, Sch 12 Pt II para 41, Sch 13 Pt I; and the Local Government and Public Involvement in Health Act 2007 Sch 13 Pt 1 paras 1, 2; and renumbered by the Greater London Authority Act 1999 Sch 29 Pt I para 14).

7 See the Local Government Act 1972 s 70(3) (added in relation to England by SI 2001/2237, and in relation to Wales by SI 2002/808; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 13, paras 1, 2).

UPDATE

91 Restriction on promotion of Bills relating to local government changes

TEXT AND NOTES--Local Government Act 1972 s 70(1), (3) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 11.

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(4) REGIONAL AND CENTRAL GOVERNMENT

92. Regional Development Agencies.

Regional Development Agencies are corporate bodies consisting of board members appointed by the Secretary of State¹. There are currently nine Regional Development Agencies².

Regional Development Agencies are required to further the economic development and regeneration of their areas, promote business efficiency, investment and competitiveness, promote employment, enhance the development and application of skills relevant to employment in their areas and contribute to sustainable development in the UK³.

1 See the Regional Development Agencies Act 1998 ss 1, 2; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 988.

2 The nine regions for which Agencies are specified are the East Midlands, Eastern, London, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber: Regional Development Agencies Act 1998 Sch 1, which also specifies all the counties, metropolitan and non-metropolitan districts comprised in each region. References in Sch 1 to a local government or administrative area are to that area as it is for the time being: s 1(3). Subject to conditions, and in accordance with the specified procedure, the Secretary of State may by order make alterations in the extent of the regions in Sch 1: see further s 25 (amended by the Greater London Authority Act 1999 s 309, Sch 25 para 14). The Regional Development Agencies are called: East Midlands Development Agency; East of England Development Agency; London Development Agency; One North East; North West Regional Development Agency; South West of England Regional Development Agency; South East of England Regional Development Agency; Advantage West Midlands; and Yorkshire Forward: see further the Regional Development Agencies website, accessible at the date on which this volume states the law at www.englishsrdas.com.

3 See the Regional Development Agencies Act 1998 s 4; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 989.

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93. Regional Assemblies.

The Regional Development Agencies¹ have a chamber, called an 'Assembly', comprised of nominated councillors from local authorities². It had been intended that this would be a first step towards directly elected regional government³. Detailed provision was made for *inter alia*, referendums on the establishment of directly elected regional assemblies⁴. The first referendum was held in November 2004 and the proposal for a regional assembly was rejected. No further referendums were arranged and, in 2007, it was announced that the Government intended to abolish regional assemblies and transfer their functions to the Regional Development Agencies⁵.

1 See PARA 92; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq.

2 The Regional Assemblies are bodies designated under the Regional Development Agencies Act 1998 s 8(1); see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq.

3 The Labour Party General Election Manifesto 2001 provided that 'provision should be made for directly elected regional government to go ahead in regions where people decided in a referendum to support it and where predominantly unitary local government is established'; see also *Your Region, Your Choice: Revitalising the English Regions* (Office of the Deputy Prime Minister, 2002).

4 See the Regional Assemblies (Preparations) Act 2003; **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 547 et seq. Notwithstanding the lack of political support for elected regional assemblies, the relevant legislation remains in force.

5 See 17 July 2007: 463 HC Official Report (6th Series) col 161, per John Henley MP, Minister for Local Government.

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94. National Assembly for Wales.

The National Assembly for Wales has certain functions conferred on it by legislation¹. Examples of such functions, in so far as they impact on local government are culture, economic development, education and training, the environment, highways, housing, social services, sport and recreation and town and country planning².

In certain cases the National Assembly for Wales may pass Measures in the same way that the Westminster Parliament passes Acts³. In particular an Assembly Measure may deal with the following matters relating to local government:

- 153 (1) provision for and in connection with: (a) the constitution of new principal areas⁴ and the abolition or alteration of existing principal areas; and (b) the establishment of councils for new principal areas and the abolition of existing principal councils⁵;
- 154 (2) provision for and in connection with: (a) the procedure for the making and coming into force of byelaws⁶; and (b) the enforcement of byelaws⁷;
- 155 (3) any of the following:
7
 - 9. (a) the principles which are to govern the conduct of members of relevant authorities⁸;
 - 10. (b) codes of conduct for such members;
 - 11. (c) the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct of such members (including the establishment of bodies to have such functions);
 - 12. (d) the making or handling of allegations that members (or former members) of relevant authorities have breached standards of conduct, including in particular the investigation and adjudication of such allegations and reports on the outcome of investigations and the action that may be taken where breaches are found to have occurred;
 - 13. (e) codes of conduct for employees of relevant authorities⁹;
- 156 (4) provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental
8

- well-being of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature¹⁰;
- 157 (5) provision for and in connection with:
- 9
14. (a) the making of arrangements by relevant Welsh authorities¹¹ to secure improvement in the way in which their functions are exercised;
15. (b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions; and
16. (c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions¹².
- 10

In relation to heads (4) and (5) the Local Government (Wales) Measure 2009 has been made¹³.

1 See the Government of Wales Act 1998 ss 1, 22, Sch 2 (repealed); the Government of Wales Act 2006 Pt 1; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Most of the functions of the Welsh Office and the Secretary of State for Wales were transferred to the Assembly. Following the transfer of such functions the Welsh Office was renamed the Wales Office.

2 See the Government of Wales Act 1998 Sch 2 (repealed).

3 See the Government of Wales Act 2006 s 94; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 For this purpose 'principal area' means a county borough or a county in Wales: Government of Wales Act 2006 Sch 5, Field 12, Matter 12.1 (Sch 5, Field 12, Matter 12.1-12.5 added by the Local Government and Public Involvement in Health Act 2007 Sch 17 para 2).

5 Government of Wales Act 2006 Sch 5, Field 12, Matter 12.1 (as added: see note 4). For this purpose 'principal council' means a council for a principal area: Sch 5, Field 12, Matter 12.1 (as so added).

6 For this purpose 'byelaw' means those of a class which may be confirmed by the Welsh Ministers (but the provision which may be made includes provision to remove a requirement of confirmation): Government of Wales Act 2006 Sch 5, Field 12, Matter 12.2 (as added: see note 4).

7 Government of Wales Act 2006 Sch 5, Field 12, Matter 12.2 (as added: see note 4).

8 For this purpose 'relevant authority' has the same meaning as in the Local Government Act 2000 Pt 3 (see PARA 232 note 4), except that other than in heading (d) in the text it does not include a police authority and 'member' includes a co-opted member within the meaning of Pt 3: Government of Wales Act 2006 Sch 5, Field 12, Matter 12.3 (as added: see note 4).

9 Government of Wales Act 2006 Sch 5, Field 12, Matter 12.3 (as added: see note 4).

10 Government of Wales Act 2006 Sch 5, Field 12, Matter 12.4 (as added: see note 4).

11 For this purpose the following are 'relevant Welsh authorities':

167 (1) a county council, county borough council or community council in Wales;

168 (2) a National Park authority for a National Park in Wales;

169 (3) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies;

170 (4) a levying body within the meaning of the Local Government Finance Act 1988 s 74(1) in respect of which the county council or charging authority referred to in s 74(1)(b) was a council or authority for an area in Wales;

171 (5) a body to which s 75 applies (special levies) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales (Government of Wales Act 2006 Sch 5, Field 12, Matter 12.5 (as added: see note 4)).

12 Government of Wales Act 2006 Sch 5, Field 12, Matter 12.4 (as added: see note 4).

13 See PARAS 393-397, 400-401, 703 et seq.

UPDATE

94 National Assembly for Wales

TEXT AND NOTES--Also, heads (6) arrangements by principal councils with respect to the discharge of their functions, including executive arrangements; and (7) committees of principal councils with functions of (a) review or scrutiny; or (b) making reports or recommendations: Government of Wales Act 2006 Sch 5, Field 12, Matters 12.6, 12.7 (added by Local Democracy, Economic Development and Construction Act 2009 s 33).

NOTE 12--Reference to Government of Wales Act 2006 Sch 5, Field 12, Matter 12.4 should be to Government of Wales Act 2006 Sch 5, Field 12, Matter 12.5.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/95. Departments concerned with local government.

95. Departments concerned with local government.

The department of central government principally concerned with the direction, control and supervision of local government and related matters¹ is, in relation to England, the Department for Communities and Local Government² and, in relation to Wales, the Department for Social Justice and Local Government and the Department for Constitutional Affairs, Equality and Communication. Other departments with functions related to local government include those responsible for education³ and health⁴.

1 As to the relationship between central and local government see Arden, Baker and Manning *Local Government Constitutional and Administrative Law* (2nd Edn, 2008); De Smith and Brazier *Constitutional and Administrative Law* (8th Edn, 1998); Griffith *Central Departments and Local Authorities* (1966) Ch 1; Elliott *Central - Local Government Relations* (1982); Loughlin *Local Government in the Modern State* (1986); Loughlin 'The Restructuring of Central - Local Government Relations' in Jowell and Oliver (eds) *The Changing Constitution* (3rd Edn, 1994) pp 261-293. See also the report of the House of Lords Select Committee on relations between central and local government *Rebuilding Trust* (HL Paper (1995-96) no 97); and the government's reply entitled *Government Response to the report of the House of Lords Select Committee on Relations between Central and Local Government 'Rebuilding Trust'* (Cm 3464) (1996).

2 This was formerly the Secretary of State for Transport, Local Government and the Regions. Responsibility was transferred to the Department for Communities and Local Government (CLG) on 5 May 2006.

It is the successor department to the Office of the Deputy Prime Minister (ODPM) and has responsibility for *inter alia*: the provision of more homes, reducing homelessness, improving local public services, regenerating areas to create more jobs, working to produce a sustainable environment and tackling anti-social behaviour and extremism. The Department sets UK policy on local government, housing, urban regeneration, planning and fire and rescue. It has responsibility for all race equality and community cohesion related issues across Great Britain and for building regulations, fire safety and some housing issues in England and Wales. The rest of its work applies only to England.

3 Ie, in relation to England, the Department for Children, Schools and Families and the Department for Innovation, Universities and Skills and, in relation to Wales, the Department for Children, Education, Lifelong Learning and Skills.

4 Ie, in relation to England, the Department of Health and, in relation to Wales, the Department for Public Health and Health Professions and the Department for Health and Social Services. See further **CONSTITUTIONAL**

LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 463 et seq; **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 5; **SOCIAL SERVICES AND COMMUNITY CARE**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/96. The Secretary of State.

96. The Secretary of State.

In earlier legislation, functions relating to local government were generally allocated to specific ministers or government departments, but most of those functions have now devolved to the Secretary of State¹. Modern statutes generally refer simply to 'the Secretary of State'. In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State². The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them³. In practice, functions relating to local government in England mostly belong to the Secretary of State for Communities and Local Government⁴.

Any power conferred on the Treasury⁵ by any local or private Act passed before 4 August 1906 with respect to dealings with property, loans and connected matters is to be exercised by the Secretary of State⁶.

1 In 1871 the Local Government Board was established for the purpose of exercising functions concerning public health, local government and poor law: see the Local Government Board Act 1871 s 2 (amended by the Statute Law (No 2) Repeals Act 1893; and the Statute Law (Repeals) Act 1978). The Local Government Board was in effect the successor to the Poor Law Commissioners and the General Board of Health: see PARA 3. The Local Government Board's functions were transferred to the Minister of Health in 1919 (see the Ministry of Health Act 1919 s 3(1)(a), (5), Sch 1 (repealed)), whose local government functions were transferred in 1951 to the Minister of Town and Country Planning, who was at the same time styled Minister of Local Government and Planning (see the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 1) Order 1951, SI 1951/142 (lapsed); and the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) Order 1951 (No 2), SI 1951/753 (lapsed)). The Minister of Local Government and Planning was renamed Minister of Housing and Local Government in 1951: see the Minister of Local Government and Planning (Change of Style and Title) Order 1951, SI 1951/1900 (lapsed).

In 1965 certain local government functions exercisable in relation to Wales and Monmouthshire were transferred to the Secretary of State for Wales to be administered through the then Welsh Office (see the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965, SI 1965/319 (lapsed)), and between 1965 and 1967 certain functions of the Minister of Agriculture, Fisheries and Food were transferred to both the Minister of Housing and Local Government and the Secretary of State for Wales (see the Minister of Land and Natural Resources Order, SI 1965/143 (lapsed); and the Ministry of Land and Natural Resources (Dissolution) Order 1967, SI 1967/156).

In 1970 the functions of the Minister of Housing and Local Government, together with those of the Minister of Transport and the Minister of Public Buildings and Works, were transferred to the Secretary of State for the Environment: see the Secretary of State for the Environment Order 1970, SI 1970/1681 (amended by the Acquisition of Land Act 1981 Sch 6 Pt III; the Finance Act 1987 s 55(3), (4); SI 1976/1775; SI 1999/1820; SI 2001/1149). At the same time the Ministry of Housing and Local Government, the Ministry of Transport and the Ministry of Public Buildings and Works were dissolved and the Department of the Environment was created: see the Secretary of State for the Environment Order 1970, SI 1970/1681 (as so amended).

From 26 January 1998, the functions of the Secretary of State for the Environment were transferred to the newly created Secretary of State for the Environment, Transport and the Regions: see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, arts 2, 3.

In June 2001 the functions of the Secretary of State for the Environment, Transport and the Regions relating to environmental matters became the responsibility of a new Secretary of State for Environment, Food and Rural Affairs, and functions relating to local government became the responsibility of a new Secretary of State for Transport, Local Government and the Regions: see No 10 Downing Street Press Release: *Delivering Effective Government* (8 June 2001).

In May 2002, the Office of the Deputy Prime Minister (ODPM) absorbed the Local Government and Regions portfolios from the defunct Department for Transport, Local Government and the Regions and in May 2006 and was renamed the Department for Communities and Local Government. See also PARA 95.

See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the transfer of certain functions in relation to Wales see PARA 97.

2 See the Interpretation Act 1978 s 5, Sch 1.

3 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

4 See note 1.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 See the Local Government Act 1972 s 244(1). If any question arises whether this provision applies to any power conferred by or referred to in any enactment, the Treasury's decision is final: s 244(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/97. The Welsh Ministers.

97. The Welsh Ministers.

Many statutory functions previously vested in the Ministers of the Crown are now exercisable in relation to Wales by the Welsh Ministers¹. Functions transferred to the Welsh Ministers include certain functions under:

- 158 (1) the Local Government Act 1888²;
- 159 (2) the Local Government Act 1894³;
- 160 (3) the Local Government Act 1929⁴;
- 161 (4) the Local Government (Miscellaneous Provisions) Act 1953⁵;
- 162 (5) the Parish Councils Act 1957⁶;
- 163 (6) the Public Bodies (Admission to Meetings) Act 1960⁷;
- 164 (7) the Local Government (Records) Act 1962⁸;
- 165 (8) the Local Authorities (Land) Act 1963⁹;
- 166 (9) the Local Government (Financial Provisions) Act 1963¹⁰;
- 167 (10) the Local Government Act 1966¹¹;
- 168 (11) the Local Authorities (Goods and Services) Act 1970¹²;
- 169 (12) the Local Authority Social Services Act 1970¹³;
- 170 (13) the Local Government Act 1972¹⁴;
- 171 (14) the Local Government Act 1974¹⁵;
- 172 (15) the Local Government (Miscellaneous Provisions) Act 1976¹⁶;
- 173 (16) the Local Government, Planning and Land Act 1980¹⁷;
- 174 (17) the Local Government (Miscellaneous Provisions) Act 1982¹⁸;
- 175 (18) the Local Government Act 1986¹⁹;
- 176 (19) the Local Government Act 1988²⁰;
- 177 (20) the Local Government and Housing Act 1989²¹;
- 178 (21) the Local Government Act 1992²²;
- 179 (22) the Local Government (Wales) Act 1994²³; and
- 180 (23) the Local Government (Contracts) Act 1997²⁴.

In general, Acts that have come into force since the establishment of the National Assembly for Wales make specific provision for the exercise of functions in relation to Wales²⁵.

1 The functions so conferred on the Welsh Ministers are:

172 (1) those specifically transferred to them by Order in Council under the Government of Wales Act 2006 s 58;

173 (2) those previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 and subsequently transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 paras 26, 30; and

174 (3) any functions specifically conferred by enactments made subsequent to the passing of the Government of Wales Act 1998 and subsequently transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 para 30.

2 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Local Government Act 1888 see PARA 3.

3 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government Act 1894 see PARA 3.

4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government Act 1929 see PARA 3.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Functions under the Local Government (Miscellaneous Provisions) Act 1953 s 8(3) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 694) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Parish Councils Act 1957 see PARA 613.

7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Public Bodies (Admission to Meetings) Act 1960 see PARAS 641-651.

8 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government (Records) Act 1962 see PARAS 541, 544.

9 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Authorities (Land) Act 1963 see PARAS 521-522.

10 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government (Financial Provisions) Act 1963 see PARA 437.

11 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions of the Treasury under the Local Government Act 1966 relating to games licences (see **ANIMALS** vol 2 (2008) PARAS 807, 816) have not been transferred: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Authorities (Goods and Services) Act 1970 see PARA 495.

13 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Authority Social Services Act 1970 see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1005 et seq.

14 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions under the Local Government Act 1972 have not been transferred. These include: (1) functions under s 58 (so far as it relates to the making of an order in relation to police areas) (see PARA 86); (2) functions under s 103 (so far as it applies to joint committees of police authorities by virtue of s 107) (see PARA 380); (3) functions under s 119(3) (see PARA 446); (4) functions under s 244(2) (see PARA 96); (5) functions under s 259 (see PARA 7); (6) functions under s 260 (see PARA 7); and (7) functions under Sch 12 para 37 (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 297): see the

National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to police areas and authorities see **POLICE** vol 36(1) (2007 Reissue) PARAS 136. In relation to Wales, the functions of the Secretary of State under the Local Government Act 1972 s 236(11) (see PARA 557) are exercisable by the Welsh Ministers concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. In relation to Wales, references in the Local Government Act 1972 s 121 (see PARA 510), s 128 (see PARA 529), s 141(2) (see PARA 542), s 240 (see PARA 99) and s 250 (see PARA 105) to 'minister', 'ministers' or 'the Secretary of State' have effect as if they were, or included, references to the Welsh Ministers: see the Government of Wales Act 2006 Sch 11 para 30; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions under the Local Government Act 1974 have not been transferred. These include: (1) functions under s 23 (see PARA 839); (2) the functions of the Secretary of State in discharging a notice under s 32(3) (see PARA 863), so far as the notice relates to a police authority or to any other body (other than a regional flood defence committee) exercising functions in England and Wales; (3) the function of the Secretary of State under s 35(3), (4) (see PARA 618), so far as it relates to the removal or relaxation of any control conferred by or under any enactment on a body other than the Welsh Ministers; and (4) functions under Sch 4 para 3(1) so far as it relates to local commissioners (but not officers) and functions under Sch 4 para 3(2) (see PARA 840): see the Government of Wales Act 2006 Sch 11 para 30; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to regional flood defence committees see **WATER AND WATERWAYS** vol 101 (2009) PARA 560 et seq. As to local commissioners see PARA 839 et seq. The function of a Minister of the Crown of giving notice (other than notice of discharge) under the Local Government Act 1974 s 32(3) (see PARA 863) is exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom it is exercisable: see the Government of Wales Act 2006 Sch 11 para 30; the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. The requirement for Treasury approval under the Local Government Act 1974 Sch 4 para 3(1) (see PARA 840) continues in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

16 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Local Government (Miscellaneous Provisions) Act 1976 s 30(3) (see PARA 446) have not been transferred: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. See also **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

17 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions under the Local Government, Planning and Land Act 1980 have not been transferred. These include: (1) functions under s 95(4) (see PARA 525), so far as it applies to land other than Crown land held by the National Assembly for Wales; and (2) functions under s 99(6)(b) (see PARA 526): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to Crown land see **CROWN PROPERTY**. As to the Local Government, Planning and Land Act 1980 see PARAS 525-527, 546, 597. See also **TOWN AND COUNTRY PLANNING**.

18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

19 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government Act 1986 see PARAS 547-548.

20 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government Act 1988 see PARAS 497-501.

21 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions under the Local Government and Housing Act 1989, that have now been repealed, were not transferred: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

22 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government Act 1992 see PARA 55 et seq.

23 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Certain functions under the Local Government (Wales) Act 1994 have not been transferred. These include: (1) functions under s 17 (see PARA 579); (2) functions under s 25 (see PARA 417); (3) functions under s 38; (4) functions under s 54(6) (see PARA 18); (5) functions under s 57(7) (see PARA 18); (6) functions under s 58 (see PARA 18); (7) functions under s 60(4) (see PARA 536); and (8) functions under Sch 5 Pt III (see **TOWN AND COUNTRY PLANNING**): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

24 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Local Government (Contracts) Act 1997 see PARAS 411-416, 496.

25 Under the Local Government Act 1999 Pt 1 (ss 1-29) for each reference to the Secretary of State in ss 3 (see PARA 689), 10A (see PARA 699), 12A (see PARA 701), 13A (see PARA 702), 15 (see PARA 694), 19 (see PARA 499), 23 (see PARA 696), 25 (see PARA 697), 26 (see PARA 698) there is substituted a reference to the Welsh Ministers: s 29(1A) (s 29(1) substituted and s 29(1A) added by the Welfare Reform Act 2007 s 38(2)). However this does not have effect in so far as the Local Government Act 1999 Pt 1 relates to a police authority for a police area in Wales: s 29(1) (as so substituted). See also the Local Government Act 2000 s 3(7) (see PARA 463) and s 106(1). See also PARA 1 note 18.

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98. Subordinate legislation made by ministers.

There are powers to make orders, rules and regulations under various enactments relating to local government, and certain matters are often left to be prescribed by order or regulations¹.

It is normally, but not invariably, provided in the statutes relating to local government that a power to make orders, rules or regulations must be exercised by statutory instrument².

Any power under the Local Government Act 1972 to make an Order in Council or other order includes power to make an order varying or revoking any order previously made under that provision³.

1 'Prescribed' means prescribed by regulations made by the Secretary of State and the Welsh Ministers: see the Local Government Act 1972 s 270(1); and PARAS 96-97.

2 See eg the Local Government Act 1972 s 266(1); the Local Government Act 2000 s 105; and the Local Government Act 2003 Sch 3 para 14. See further **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq. For exceptions see eg the Local Government Act 1972 s 261, Sch 3 para 3 and Sch 5 para 2 (Sch 5 as originally enacted) (see PARA 7).

3 Local Government Act 1972 s 266(2).

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99. Provisional orders.

Where the Secretary of State and the Welsh Ministers¹ are authorised to make a provisional order², there are statutory procedures which require: (1) notices to be given by the applicants³; (2) consideration by the Secretary of State or the Welsh Ministers of objections made by persons affected by the order; and (3) the holding of a local inquiry unless for special reasons the Secretary of State thinks or the Welsh Ministers think such an inquiry is unnecessary⁴. The Secretary of State or the Welsh Ministers may submit the provisional order for confirmation, and the order has no effect until so confirmed⁵.

The reasonable costs of a local authority⁶, as sanctioned by the Secretary of State or the Welsh Ministers, in promoting or opposing a provisional order are deemed to be expenses properly incurred by the authority and must be paid accordingly, and may be defrayed by borrowing⁷.

Where any enactment⁸, whenever passed, authorises the formation by provisional or other order of a joint board or joint committee, the constituent members of which are local authorities, for the discharge of any of the functions of those authorities, the provisional order or orders may apply to the joint board or joint committee, subject to any necessary modifications, any of the provisions of the Local Government Act 1972⁹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 I.e. under the Local Government Act 1972 or any enactment passed on or after 1 June 1934: s 240(1). As to powers to make orders that are provisional only see eg s 254(8) (see PARA 6 note 8) and s 262(10) (see PARA 14). Any such order may repeal, revoke, modify or amend any Act confirming a provisional order, or any order which has been subject to parliamentary procedure: s 240(4). The making of the order is prima facie evidence that all the requirements of s 240 and any other enactment with respect to the steps to be taken before the making of the order have been complied with: s 240(6). The provisional order procedure is now largely superseded by the special parliamentary procedure: see **PARLIAMENT** vol 34 (Reissue) PARA 913.

3 See the Local Government Act 1972 s 240(1)(a). The notice must be given in the London Gazette and either in one or more local newspapers circulating in the area to which the order will relate or, in the Isles of Scilly, by public notice in each parish to which the order will relate: see s 240(1)(a); and the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule.

4 See the Local Government Act 1972 s 240(1)(b). Notice of the inquiry must be given, and all persons interested must be permitted to attend the inquiry and make objections: s 240(1)(b). As to local inquiries see PARA 105.

5 See the Local Government Act 1972 s 240(1)(c). At any time before it is submitted, the order may be revoked, either wholly or in part: s 240(5). As to the procedure where there is opposition to a provisional order see s 240(1)(d).

6 As to the meaning of 'local authority' see PARA 23.

7 Local Government Act 1972 s 240(2). These costs include those of the preliminary inquiry or in supporting or opposing the Bill: s 240(2).

8 As to the meaning of 'enactment' see PARA 12 note 1.

9 Local Government Act 1972 s 241.

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100. Orders subject to special parliamentary procedure.

In certain cases¹, an order may be subject to special parliamentary procedure² under which a number of procedural requirements apply³. Notice of the application for the order must be given by the applicants⁴.

1 I.e. under the Local Government Act 1972 and in the case of certain orders under enactments passed on or after 1 June 1934 which are subject to the procedure by virtue of the Statutory Orders (Special Procedure) Act 1945 s 8(3): see the Local Government Act 1972 s 240(3).

2 The special parliamentary procedure is contained in the Statutory Orders (Special Procedure) Acts 1945 and 1965: see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

3 Local Government Act 1972 s 240(3). Any such order may repeal, revoke, modify or amend any Act confirming a provisional order, or any order which has been subject to parliamentary procedure: s 240(4). The making of the order is prima facie evidence that all the requirements of s 240 and any other enactment with respect to the steps to be taken before the making of the order have been complied with: s 240(6). The procedures contained in s 240(3)-(6) (see PARA 99) may be adapted or modified by Order in Council under the Statutory Orders (Special Procedure) Act 1945 s 8(3): see the Local Government Act 1972 s 240(7).

4 See the Local Government Act 1972 s 240(3)(a). The notice must be given by advertisement in the London Gazette and either in one or more local newspapers circulating in the area to which the order will relate or, in the Isles of Scilly, by public notice in each parish to which the order will relate: see s 240(3)(a); and the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule.

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101. Other ministerial powers over local government.

It seems that the royal prerogative no longer survives as a directing, controlling or supervisory power in relation to statutory local authorities¹. Thus the powers of the Secretary of State, the Welsh Ministers² and ministers for the direction, control and supervision of local authorities, other than by the making of orders, rules or regulations by statutory instrument³, are found in Acts of Parliament and subordinate legislation under them⁴. In addition to the many such powers contained in the legislation specifically directed to functions of local authorities⁵, the principal structural and financial enactments include the following range of ministerial powers over local authorities:

- 181 (1) the determination of the amount of grants to be paid by central government to local authorities each year⁶;
- 182 (2) the limitation (or 'capping') of council tax and precepts by the designation of authorities with excessive budget requirements or increases and the proposal of new maximum budget requirement amounts⁷;
- 183 (3) the giving of directions as to reviews of local government areas and electoral arrangements⁸, as to the disposal of underused or unused land⁹, as to the holding of an extraordinary audit¹⁰, and as to compliance with the requirements of best value¹¹;
- 184 (4) the confirmation or authorisation of local authority instruments, such as compulsory purchase orders¹² and byelaws¹³;
- 185 (5) the giving of approvals or consents to specific actions of local authorities for which such approval or consent is required, for example in relation to credit arrangements¹⁴ and the disposal or appropriation of land¹⁵;
- 186 (6) the fixing of standards or maximum standards, for example maximum travelling and subsistence allowances¹⁶;
- 187 (7) the appointment of members of commissions¹⁷, and of arbitrators in certain cases of dispute¹⁸;
- 188 (8) general supervision, for example in relation to requirements for reports, returns and information¹⁹, and the holding of inquiries into a range of local government matters²⁰.

The courts have long recognised the fact that in proper instances ministers' determinations or other decisions are rightly made without specific formal process²¹ and may be made by responsible officials of the appropriate department²².

- 1 See PARA 1 note 2; but see the discussion in *R (on the application of Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548, as to the existence of a general common law of the Crown (where it was held that the Secretary of State had power to invite local authorities to submit proposals for new unitary authorities, notwithstanding that the Local Government and Public Involvement in Health Act 2007, which conferred power to invite these submissions and prescribed the process to be followed, was not yet in force). As to the grant of status and style under the royal prerogative see PARAS 25, 38, 107.
- 2 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 3 As to orders, rules and regulations see PARAS 98-100.
- 4 See **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 18, 38. 'Subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act: Interpretation Act 1978 s 21(1). See **STATUTES** vol 44(1) (Reissue) PARAS 1232, 1499. Certain circulars of government departments are instruments within this definition: see PARA 102.
- 5 See PARA 579 et seq.
- 6 As to grants see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 631 et seq.
- 7 As to the limitation of council tax and precepts see the Local Government Finance Act 1992 Pt I Ch IVA (ss 52A-52Z) (added as regards the financial year beginning with 1 April 2000 and subsequent financial years); and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq. As to precepts see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 524 et seq; and as to council tax see **RATING AND COUNCIL TAX**.
- 8 As to reviews of local government areas and electoral arrangements in England see the Local Government and Public Involvement in Health Act 2007 Pt 1 Ch 1 (ss 1-23); and PARA 57 et seq. As to reviews of local government areas and electoral arrangements in Wales see the Local Government Act 1972 Pt IV (ss 53-78); and PARA 77 et seq.
- 9 See the Local Government, Planning and Land Act 1980 ss 98-99; and PARA 526.
- 10 See the Audit Commission Act 1998 s 25; and PARA 776.
- 11 See the Local Government Act 1999 s 15; and PARA 694.
- 12 See the Local Government Act 1972 ss 121, 125; and PARAS 510, 517. See also PARA 512. In certain cases, however, compulsory purchase orders attract special parliamentary procedure: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 603-605. As to the special parliamentary procedure see PARA 100.
- 13 See the Local Government Act 1972 ss 236, 236A; and PARA 556. See also s 235(2); and PARA 555 note 1.
- 14 See the Local Government Act 2003 ss 7-8.
- 15 See the Local Government Act 1972 ss 122, 123, 126, 127; and PARAS 513, 515, 518, 520. Consents may be given in general terms or for specific matters: see s 128; and PARA 529. As to the use of circulars in this connection see PARA 102.
- 16 See the Local Government Act 1972 s 174; and PARA 174.
- 17 Eg the Boundary Committee for England (see PARA 58 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 60-66), the Local Government Boundary Commission for Wales (see PARA 77 et seq), the Commission for Local Administration in England (see PARA 839 et seq) and the Audit Commission for Local Authorities and the National Health Service in England and Wales (see PARA 744 et seq).
- 18 See eg the Local Government Act 1972 ss 68, 103; and PARAS 88, 380.
- 19 See eg the Local Government Act 1972 ss 141, 168, 230; and PARAS 542, 543; and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.
- 20 See the Local Government Act 1972 s 250; and PARA 105.
- 21 See *Purfleet UDC v Minister of Health and Essex County Council* (1935) 105 LJB 44, sub nom *R v Minister of Health, ex p Purfleet UDC* 33 LGR 481, HL; *Re 56 Denton Road, Twickenham* [1953] Ch 51, [1952] 2 All ER 799.

22 See *Carltona Ltd v Works Comrs* [1943] 2 All ER 560, CA. As to the sub-delegation of powers by ministers see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 31; **JUDICIAL REVIEW** vol 61 (2010) PARA 611.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/102. Circulars of government departments.

102. Circulars of government departments.

In addition to exercising its order-making power¹ and other powers of local government direction, control and supervision², the central government seeks to publicise, explain and implement its policies by issuing circulars³ through its departments⁴. The most important circulars are published by Her Majesty's Stationery Office, but others may not be so published and are only obtainable from the department concerned. It is not possible to define the legal status of circulars in general terms in that a single circular may combine ministerial advice, information and guidance with statutory approvals or consents, and with minimum or maximum standards or limits⁵. In every case, however, an approval, consent or limit contained in a circular is one which the Secretary of State, Welsh Minister or minister has been authorised to effect other than by statutory instrument.

Circulars which contain ministerial decisions or which refer to them are clearly within the range of the inherent jurisdiction of the courts to review the exercise by public bodies or officers of statutory powers impinging on legally recognised interests⁶. The courts will also review the content of guidance or advice contained in a circular on the grounds that it mis-states the law or that the publication is manifestly inaccurate or misleading⁷. The courts may also intervene on grounds of bad faith or unreasonableness⁸ where the decision to issue the document in the form in which it was published was fatally flawed because, for example, it amounted to such a distortion of what purported to be the objects of publishing the document that it was clear that no proper consideration was given to issuing it in that form, or some irrelevant consideration was taken into account, or it was issued for some collateral purpose, or the discretion was being exercised perversely⁹. Even when a minister purports to act in accordance with a White Paper approved by both Houses of Parliament, the courts will act to prevent action being taken which is not authorised by legislation¹⁰.

1 As to order-making powers see PARAS 98-100.

2 See PARA 101.

3 Similar documents are also issued in the form of memoranda, guidance notes and codes and leaflets. These are subject to the same legal principles and considerations as circulars.

4 Government departments generally maintain official lists of circulars indexed by their various subjects.

5 As to the legal basis for issuing circulars and disseminating information generally see *Jenkins v A-G* (1971) Times, 14 August, where it was held that the issue of a free pamphlet on the common market to the public was a prerogative power of the Crown; *R v Secretary of State for the Environment, ex p Greenwich London Borough Council* [1989] COD 530, (1989) Times, 17 May, DC, where Woolf LJ was prepared to accept, but did not conclusively determine, that the publication by central government departments of leaflets and other guidance documents is done in exercise of the royal prerogative. Alternatively, the power to disseminate information may be seen as a common law power possessed by the Crown by virtue of its legal personality as a corporation sole: see *Malone v Metropolitan Police Comr* [1979] Ch 344, sub nom *Malone v Metropolitan Police Comr (No 2)* [1979] 2 All ER 620; *R v Secretary of State for Health, ex p C* [2000] 1 FCR 471, [2000] 1 FLR 627, CA; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 6. See further 'The Central Government Conventions on Publicity and Advertising' first formally stated in a memorandum to the Widdicombe Committee (whose 1986 report is *The Conduct of Local Government Business* (Cmnd 9797) (1986)) and now reproduced in an annex to the report of the Comptroller and Auditor General *Publicity Services for Government Departments* (HC Paper (1989-90) no 46); 'The Community Charge and the Limits of Judicial Review' [1989] LGR 442; Holgate

'The Community Charge Leaflet' [1989] LGR 625; and Munro 'Government Advertising and Publicity' (1990) Public Law 1.

6 See **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. The courts will intervene in decisions taken by public bodies, including ministers, on grounds of illegality, irrationality and procedural impropriety: see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410-411, HL, per Lord Diplock. See also PARA 461.

7 See *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, [1981] 1 All ER 545, HL (unsuccessful action for a declaration on a circular interpreting the abortion legislation); *Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security* [1986] AC 112, [1985] 3 All ER 402, HL (unsuccessful action for a declaration on a memorandum of guidance to health authorities about contraceptives for girls under the age of 16); *Nottinghamshire County Council v Secretary of State for the Environment* [1986] AC 240, [1986] 1 All ER 199, HL (unsuccessful judicial review of guidance issued about spending); *R v Secretary of State for the Home Department, ex p Northumbria Police Authority* [1989] QB 26, [1988] 1 All ER 556, CA (unsuccessful judicial review of a scheme in a circular making riot equipment available to chief constables); *R v Secretary of State for the Environment, ex p Greenwich London Borough Council* [1989] COD 530, Times, 17 May, DC (unsuccessful judicial review of leaflet explaining the community charge); *R v Secretary of State for the Environment, ex p Lancashire County Council* [1994] 4 All ER 165, 93 LGR 29 (partly successful judicial review of guidance to the Local Government Commission).

8 See *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA; and **JUDICIAL REVIEW** vol 61 (2010) PARA 617.

9 See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL; *R v Secretary of State for the Environment, ex p Greenwich London Borough Council* [1989] COD 530, Times, 17 May, DC. See also 'The Community Charge and the Limits of Judicial Review' [1989] LGR 442; Holgate 'The Community Charge Leaflet' [1989] LGR 625; and Munro 'Government Advertising and Publicity' (1990) Public Law 1.

Following *R v Liverpool City Council, ex p Baby Products Association* [2000] LGR 171, 2 LGLR 689, it may also be possible to judicially review a central government circular if it has the same object and effect as a notice or other publication capable of being issued under a comprehensive statutory regime provided that the regime in question imposes requirements that have not been complied with and displaces any more general power to act outside the regime. See also *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513, [1995] 2 All ER 244, HL.

10 See *Laker Airways Ltd v Department of Trade* [1977] QB 643, [1977] 2 All ER 182, CA, where a White Paper approved by both Houses of Parliament was held not to authorise the Secretary of State to give directions to the Civil Aviation Authority as to the exercise of its powers. As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARAS 50-77.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/103. European Charter of Local Self-Government.

103. European Charter of Local Self-Government.

The European Charter of Local Self-Government¹ is a treaty promulgated by the Council of Europe to which the UK government is a signatory². Its provisions accord respect for local government³. As the Charter has not been incorporated into domestic law, it has not been considered relevant when considering how central government powers affecting local government should be exercised.⁴

1 Council of Europe Convention on Local Self-Government (Strasbourg, 15 October 1985; ETS 122 (1988); Cm 3884).

2 The European Charter of Local Self-Government was signed on behalf of the UK government on 3 June 1997.

3 Which include basic principles of local self-government, such as the principle of subsidiarity (European Charter of Local Self-Government art 4), rights of staff (arts 6, 7) and legal protection of self-government (art 11).

4 See *R (on the application of Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548 where the Court of Appeal found the European Charter of Local Self-Government of no assistance and held that it could not be considered as a source of substantive rights or limitations on the power of central government.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/104. Local Agenda 21.

104. Local Agenda 21.

Agenda 21 was an action plan for (among others) national and local government, adopted at the United Nations Conference on Environment and Development, with the intention of promoting a 'joined up' approach in areas such as environmental protection and sustainable growth¹. Local authorities were encouraged to develop a local agenda² for their community³. By 2000, some 90 per cent of local authorities had adopted such plans and policies⁴.

1 See Agenda 21 which was adopted at the United Nations 'Earth Summit' at Rio De Janeiro, Brazil, June 1992. In consequence, the (then) Department of the Environment made funding available for the local authority associations to produce the Local Agenda 21 Initiative.

2 ie covering matters such as energy efficiency in local authority buildings and housing, making full use of environmentally friendly technologies, traffic calming and so on.

3 See Agenda 21 Chapter 28.

4 See '*Achieving a Better Quality of Life*', Department of the Environment, Food and Rural Affairs, 2003.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/ (4) REGIONAL AND CENTRAL GOVERNMENT/105. Local inquiries.

105. Local inquiries.

Where the Secretary of State or the Welsh Ministers¹ are authorised by the Local Government Act 1972 to determine any difference, to make or confirm any order, to frame any scheme or to give any consent, confirmation, sanction or approval to any matter, or otherwise to act under the Act, and where the Secretary of State or the Welsh Ministers are authorised to hold an inquiry, either under the Local Government Act 1972 or under any other enactment² relating to the functions of a local authority³, he or they may cause a local inquiry to be held⁴.

For the purpose of any such local inquiry, the person appointed to hold the inquiry may require any person to attend to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry⁵. He may take evidence on oath, and for that purpose administer oaths⁶.

Every person who refuses or deliberately fails to attend or to give evidence, or who deliberately alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he is required or is liable to be required to produce for these purposes is liable on summary conviction to a fine⁷ or to imprisonment⁸, or to both⁹.

Where a minister causes an inquiry to be held under these provisions, the costs incurred by him in relation to the inquiry are to be paid by such local authority or party to the inquiry as he may direct, and the minister may cause the amount of the costs so incurred to be certified, and any amount so certified and directed to be paid by any authority or person is recoverable from that authority or person by the minister summarily as a civil debt¹⁰.

The minister causing such an inquiry to be held may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid, and every such order may be made a rule of the High Court on the application of any party named in the order¹¹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Inquiries may be held under the Local Government Act 1972 s 240(1)(b), (3)(b): see PARAS 99-100. As to the meaning of 'enactment' see PARA 12 note 1.

3 As to the meaning of 'local authority' see PARA 23. As to the functions of local authorities see PARA 579 et seq.

4 Local Government Act 1972 s 250(1). The provisions of s 250 extend to local inquiries held under the Ferries (Acquisition by Local Authorities) Act 1919 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 888 et seq), the Local Government Act 1929 (largely repealed) and the Local Government Act 1958: see s 63 (amended by the Statute Law (Repeals) Act 1978 and repealed by Statute Law (Repeals) Act 2004); and the Local Government Act 1972 ss 250(6), 272(2).

The wide-ranging power under s 250 to cause a local inquiry to be held has been applied or extended in whole or in part (and in some cases with modifications) by a number of other enactments: see eg the Local Authority Social Services Act 1970 s 7C (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011); the Highways Act 1980 s 302 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 54); the Acquisition of Land Act 1981 s 5 (see **COMPULSORY ACQUISITION OF LAND**); the Public Health (Control of Disease) Act 1984 s 70 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 63); the Housing Act 1985 s 616; the Regional Development Agencies Act 1998 s 25(5) (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq); and the Local Government Act 1999 s 15 (see PARA 694).

5 See the Local Government Act 1972 s 250(2) (amended by the Statute Law (Repeals) Act 1989). However, no person may be required to attend to give evidence or to produce documents unless the necessary expenses of his attendance are paid or tendered to him (see the Local Government Act 1972 s 250(2) proviso (a)), and nothing in s 250 empowers the person holding the inquiry to require the production of the title, or of any instrument relating to the title, of any land not being the property of a local authority (see s 250(2) proviso (b)). As to the meaning of 'land' see PARA 509 note 4.

6 See the Local Government Act 1972 s 250(2) (as amended: see note 5).

7 I.e. a fine not exceeding level 3 on the standard scale: see the Local Government Act 1972 s 250(3) (as amended: see note 9). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

8 I.e. imprisonment for a term not exceeding six months: see the Local Government Act 1972 s 250(3) (as amended: see note 9).

9 Local Government Act 1972 s 250(3) (amended by the Criminal Justice Act 1982 ss 38, 46).

10 Local Government Act 1972 s 250(4) (amended by the Housing and Planning Act 1986 s 49(2), Sch 12 Pt III). Where the minister is authorised under or by virtue of the Local Government Act 1972 s 250(4) to recover costs incurred by him in relation to an inquiry, he may recover the entire administrative cost of the inquiry so that, in particular: (1) such reasonable sum as the minister may determine in respect of the general staff costs and overheads of his department is treated as costs incurred in relation to the inquiry; and (2) any costs incurred in relation to the inquiry by any other minister or government department and, where appropriate, such reasonable sum as that minister or department may determine in respect of general staff costs and overheads are treated as costs incurred by the minister holding the inquiry: see the Housing and Planning Act 1986 s 42(1), (2). The minister may by regulations prescribe for any description of inquiry a standard daily

amount, and where such an inquiry does take place the following may be recovered: (a) the prescribed standard amount in respect of each day, or an appropriate proportion in respect of part of a day, on which the inquiry sits or the person appointed to hold the inquiry is otherwise engaged on work connected with it; (b) costs actually incurred in connection with the inquiry on travelling or subsistence allowances or the provision of accommodation and other facilities for the inquiry; (c) any costs attributable to the appointment of an assessor to assist the person appointed to hold the inquiry; and (d) any legal costs or disbursements incurred or made by or on behalf of the minister in connection with the inquiry: s 42(4). As to the regulations that have been made see the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000, SI 2000/2307, and the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007, SI 2007/728. As to the standard daily amount see the Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000, SI 2000/2307, reg 3 and the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007, SI 2007/728, regs 4-6. The cost of an inquiry which does not take place may be recovered by the minister from any person who would have been a party to the inquiry to the same extent, and in the same way, as the cost of an inquiry which does take place: Housing and Planning Act 1986 s 42(3).

A magistrates' court has power to make an order on complaint for the payment of any money which is recoverable summarily as a civil debt: see the Magistrates' Courts Act 1980 s 58(1); and **MAGISTRATES**.

11 Local Government Act 1972 s 250(5). As to matters relevant to costs decisions under s 250(5) see *R v Secretary of State for the Environment, ex p North Norfolk District Council* [1994] 2 PLR 78. In *Re Wood's Application* (1952) 3 P & CR 238, DC, it was held that the Secretary of State's discretion as to the costs of a town planning inquiry would not be controlled by mandamus (now a mandatory order: see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq). However, the decision of the Secretary of State that a local authority was to pay the costs of a local inquiry, on the ground that it had acted unreasonably in refusing planning permission for a development and had thereby put the developer to unreasonable expense, was quashed in *Newport County Borough Council v Secretary of State for Wales* [1998] JPL 377, CA. See also *R v Secretary of State for the Environment, ex p Chichester District Council* [1993] 2 PLR 1; *R v Secretary of State for the Environment, ex p Wakefield Metropolitan Borough Council* (1996) 75 P & CR 78.

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106. Procedure at local inquiries.

Local inquiries under the Local Government Act 1972¹ are subject to certain provisions of, and rules made under, the Tribunals and Inquiries Act 1992, which applies in differing respects to a wide range of tribunals and inquiries². Rules have been made³ in respect of certain kinds of inquiry, and in particular for regulating the procedure for compulsory purchase order inquiries⁴ and for town planning inquiries⁵.

Provided that the rules of natural justice⁶ are observed, the strict rules as to evidence and procedure applicable in the courts need not be followed at public inquiries⁷. Subject to any specific requirements applied by or under statutes, a person conducting such an inquiry is master of his own procedure and may admit hearsay evidence and act on any evidence which is logically probative⁸.

Where a minister notifies any decision taken by him after an inquiry has been held by him or on his behalf, he must generally furnish a statement of the reasons for the decision, if requested⁹.

The provisions relating to appeals¹⁰ do not apply to all local inquiries, which are subject to the inherent jurisdiction of the High Court to review actions of judicial and administrative bodies by way of judicial review¹¹.

1 le under the Local Government Act 1972 s 250: see PARA 105.

2 See the Tribunals and Inquiries Act 1992; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq.

3 le under the Tribunals and Inquiries Act 1992 s 9: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 15.

4 See the Compulsory Acquisition by Non-Ministerial Authorities (Inquiries Procedure) Rules 2007, SI 2007/3617; see also Communities and Local Government Circular 01/2008, 15 January 2008; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 587 et seq.

5 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (amended by SI 2003/956; SI 2006/1282); the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115; the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules, SI 2000/1625 (amended by SI 2003/956). See also the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (amended by SI 2004/3172; SI 2007/2285), and the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (amended by SI 2004/3172; SI 2007/2285); and **TOWN AND COUNTRY PLANNING**.

6 As to the rules of natural justice see **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq.

7 *R v Deputy Industrial Injuries Comr, ex p Moore* [1965] 1 QB 456, [1965] 1 All ER 81, CA; *TA Miller Ltd v Minister of Housing and Local Government* [1968] 2 All ER 633 at 634, [1968] 1 WLR 992 at 995, CA, per Lord Denning MR; *Bushell v Secretary of State for the Environment* (1977) 76 LGR 460, 36 P & CR 363. See also *R v London Regional Passenger Committee, ex p Brent London Borough Council* (1985) Times, 23 May (committee hearing).

8 See, in particular, *TA Miller Ltd v Minister of Housing and Local Government* [1968] 2 All ER 633 at 634, [1968] 1 WLR 992 at 995, CA, where Lord Denning MR stated that such evidence need not be tested by cross-examination provided the tribunal gives the other side a fair opportunity of commenting on it and contradicting it. Cf *Nicholson v Secretary of State for Energy* (1977) 76 LGR 693, DC; *Bushell v Secretary of State for the Environment* (1977) 76 LGR 460, 36 P & CR 363.

9 See the Tribunals and Inquiries Act 1992 s 10; and **JUDICIAL REVIEW** vol 61 (2010) PARA 646. As to the standard required of reasons see *Re Poyser and Mills' Arbitration* [1964] 2 QB 467, [1963] 1 All ER 612 (reasons must be proper, adequate and intelligible and deal with the substantial points raised); *Bolton Metropolitan District Council v Secretary of State for the Environment* [1996] 1 All ER 184, 71 P & CR 309, HL (reasons need only deal with the principal important controversial issues before the decision-maker). As to the sufficiency of reasons see **JUDICIAL REVIEW** vol 61 (2010) PARA 646.

10 See the Tribunals and Inquiries Act 1992 s 11.

11 As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/(5) CIVIC RIGHTS AND PRIVILEGES; OFFICERS OF DIGNITY AND THE LIEUTENANCY/107. Civic status and styles.

(5) CIVIC RIGHTS AND PRIVILEGES; OFFICERS OF DIGNITY AND THE LIEUTENANCY

107. Civic status and styles.

Borough status may be granted by charter on the application of a district council in England or a county council in Wales¹. Under the royal prerogative², Her Majesty may also grant the status of city or of royal borough, or confer the style 'lord mayor', 'deputy lord mayor' or 'right honourable'³. The conferment of these honours, however, in no way extends the powers, functions or duties of the authority or the holder of the office concerned⁴. Grants of prerogative titles are made by Her Majesty on ministerial advice and take the form of letters patent⁵.

¹ See PARAS 25, 38.

² As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.

3 See the Local Government Act 1972 s 245(10).

4 See PARAS 25 text and note 7, 38 text and note 4.

5 There is thus a distinction as compared with charters granting borough status which are the subject of advice tendered to Her Majesty by the Privy Council: see PARAS 25, 38. As to the Home Secretary see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 466. As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

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108. Appointments of officers of dignity.

At the time of local government reorganisation in 1974¹, cities and boroughs exercised by charter, custom or by statute powers of appointment of local officers of dignity. Among the honorary appointments so made were those of sheriffs², high stewards³, honorary recorders⁴, honorary freemen and honorary aldermen⁵. These privileges are among those preserved by the Local Government Act 1972.

Where borough status is granted by charter⁶, the charter may provide for those appointments that were exercisable by the corporation to be made by the successor council⁷ and for those appointments that were exercisable by the citizens or burgesses to be made by the inhabitants of the whole or any part of the district⁸. Such a charter may contain incidental, consequential or supplementary provisions⁹.

Where the area of a city or borough became a parish or community, any powers to appoint local officers of dignity became exercisable by the parish or community council¹⁰. Where the area of a city or borough did not become a parish or community, and became comprised in a district not having the status of a borough, any powers to appoint local officers of dignity became exercisable by the charter trustees¹¹.

A city or town mayor holding office by virtue of these provisions may be paid an allowance to enable him to meet the expenses of his office¹².

1 See under the Local Government Act 1972: see PARA 5.

2 As to sheriffs see PARA 115; and **SHERIFFS**.

3 High stewards were appointed under powers granted in charters or merely by long-standing custom.

4 The council of a borough has power to appoint a person to be honorary recorder of the borough: Courts Act 1971 s 54(1). A person is not qualified to hold office as an honorary recorder of a borough unless he is a circuit judge or a recorder appointed under the Courts Act 1971 (s 54(3) (amended by the Local Government Act 1972 s 272(1), Sch 30)), although this does not apply to a borough which immediately before 1 January 1972 had power by charter to appoint a recorder of the borough and did not have a separate court of quarter sessions (Courts Act 1971 s 54(3) proviso). As to recorders generally see **COURTS**. As to the administrative functions of former quarter sessions see PARA 609.

5 As to honorary freemen and honorary aldermen see the Local Government Act 1972 s 249; and PARA 111. As to the preservation of the status of honorary freemen created before 1 April 1974 see the Local Authorities etc (Miscellaneous Provision) Order 1974, SI 1974/482, art 18. As to freemen see further PARA 110.

6 As to the grant of borough status see PARAS 27, 43, 95.

7 See the Local Government Act 1972 s 246(2)(a) (amended by the Charter Trustees Act 1985 s 1(2)). See also, in relation to Wales, the Local Government Act 1972 s 246(2A), (2B) (s 246(2A), (2B) added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 52).

8 See the Local Government Act 1972 s 246(2)(b) (amended by the Charter Trustees Act 1985 s 1(2)). As to the preservation of privileges and rights of citizens and burgesses see PARA 109.

9 See the Local Government Act 1972 s 246(2)(c). The charter has effect subject to any provision made by a grant under Her Majesty's prerogative or any provision of a charter granted by Her Majesty under s 245 (see PARA 25) or any other provision of the Act or instrument under it: s 246(6).

10 See the Local Government 1972 s 246(3). Where part of the area of a city or borough in England became a parish, orders may provide for the application of s 246(3) to that part: see s 246(5). Such orders, being local in nature, are not noted in this work.

Section 246(3), and any order applying s 246(3), have effect subject to s 246(2A) (see note 7), any provision made by a grant under Her Majesty's prerogative or any provision of a charter granted under s 245 and any other provision of the Local Government Act 1972 or an instrument under it: s 246(6) (amended by the Charter Trustees Act 1985 s 1; and the Local Government (Wales) Act 1994 Sch 15 para 52(3)). As to charters granted under s 245 see PARA 25.

11 See the Local Government 1972 s 246(4)(c). As to the establishment of charter trustees see PARA 113. Where part of the area of a city or borough did not become a parish or community, and became comprised in a district not having the status of a borough, the Secretary of State could by order provide for the application of s 246(4) to that part: see s 246(5).

12 See s 246(14). As to such allowances see ss 15(5), 34(5); and PARAS 145, 147.

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109. Preservation of privileges and rights of citizens and burgesses.

Any privileges or rights¹ belonging immediately before 1 April 1974² to the citizens or burgesses³ of a then existing⁴ city or borough belong on and after that date to the inhabitants of the area of that city or borough⁵.

Where borough status is granted to a district by charter⁶, the charter may provide that the preserved privileges and rights are to belong, on the coming into force of the charter, to the inhabitants of the whole or any part of the district⁷.

1 These terms are not defined; but they do not extend to the functions or duties of the former authorities as such. Of further relevance is the absence of any reference to property (a word specifically used in relation to freemen in the Local Government Act 1972 s 248(4) (see PARA 110), and in relation to inhabitants in s 248(5) (see PARA 110); see also s 254(2)(a) (see PARA 6), where the term 'rights' is dealt with as a distinct matter). For a further limitation see note 3. It would appear that the protected matters are those derived from grants under charters and any other privileges and rights which by common law, custom or statute can vest in a class of persons. However, in *Potter v Berry* (1857) 6 WR 71, it was held that the right to sport over land within the liberties of a borough, granted under an ancient charter, did not extend to permit burgesses, in the absence of all evidence of exercise, to exercise such rights over land in the occupation of a third person. Further, in *Hulls v Estcourt* (1863) 27 JP 519, it was held that the new burgesses created under the Municipal Corporations Act 1835 (now repealed) were not entitled to participate in the rights of common enjoyed by the former burgesses and freemen for their own benefit prior to the passing of that Act.

2 I.e. the date on which the reorganisation of local government under the Local Government Act 1972 came into effect: see PARA 5.

3 Note that this provision preserves privileges and rights belonging to the citizens or burgesses, as distinct from matters vested in the corporation of the former city or borough.

4 As to the meaning of 'existing' see PARA 6 note 8.

5 Local Government Act 1972 s 246(1). Section 246(1) has effect subject to s 246(2A) (see PARA 108 note 7), any provision made by a grant under Her Majesty's prerogative or any provision of a charter granted under s 245 (see PARA 25) and any other provision of the Local Government Act 1972 or an instrument under it: s 246(6) (amended by the Charter Trustees Act 1985 s 1; and the Local Government (Wales) Act 1994 Sch 15 para 52(3)).

6 le under the Local Government 1972 s 245: see PARA 25.

7 See the Local Government 1972 s 246(2)(b); and PARA 108. Where, after 16 July 1985, the area of any charter trustees becomes comprised in a borough (upon the grant of a charter under the Local Government Act 1972 s 245 (see PARA 25) conferring borough status, or the making of an order under Pt IV (ss 53-78) (see PARA 77 et seq)), the charter trustees constituted for that area are to continue in being without alteration of their powers (see PARA 113), and the privileges and rights of the inhabitants of that area are unaffected: Charter Trustees Act 1985 s 1(1). Nothing in s 1 affects any charter granted under the Local Government Act 1972 s 245 (see PARA 25) prior to 16 July 1985: Charter Trustees Act 1985 s 1(3).

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110. Freemen and inhabitants of former boroughs.

Before the reforms of 1835¹, a class of persons known as freemen existed and formed part of the corporate boroughs, enjoying special rights in the corporate property². The right to be admitted a freeman rested upon the custom of the borough, varied by the terms of its charter³ and, in certain cases, by local statutory provision⁴. Generally the freedom of a borough, as distinct from the conferment of the honour of the honorary freedom⁵, might be acquired by servitude to a freeman, purchase, gift or marriage⁶.

However, the cumulative effect of the savings for the rights of freemen in the various major legislative reforms of local government⁷ have been to continue the custom of maintaining a roll of freemen⁸ and of a formal procedure for admission to it⁹ whilst extending such rights as may have existed to share in the borough property¹⁰ to all inhabitants of the borough¹¹.

1 See PARA 3. In 1835 the freemen ceased to be part of the corporate body: see *Lincoln Corpn v Holmes Common Overseers* (1867) LR 2 QB 482.

2 The freemen's rights to benefit from the property of the borough and from the borough charity were preserved by the Municipal Corporations Act 1835 s 2 (repealed). As to property rights see also *Nash v Coombs* (1868) LR 6 Eq 51; *Hopkins v Swansea Corpn* (1839) 4 M & W 621 at 644 (affd sub nom *Swansea Corpn v Hopkins* (1841) 8 M & W 901, Ex Ch).

3 See *R v Marshal* (1787) 2 Term Rep 2; *R v Powell* (1800) 8 Term Rep 639; *Helleston Case* (1776) 2 Doug El Cas 3; *Derby Borough Case* (1776) 3 Doug El Cas 287. The Local Government Act 1933 s 262 (repealed), however, extended the entitlement to share in the corporate property to every inhabitant of the borough for the time being and certain other classes.

4 These local statutory provisions were saved from the general repeal of local enactments: see the Local Government Act 1972 s 262(12); and PARA 14.

5 As to honorary freemen see PARA 111.

6 However, the admission of freemen by gift or purchase was abolished by the Local Government Act 1933 s 259(1) (repealed).

7 See the Municipal Corporations Act 1835 (repealed); the Municipal Corporations Act 1882; the Local Government Act 1933 Pt XIV (ss 259-265) (repealed); and the Local Government Act 1972 s 248. The Local Government Act 1972 provides that nothing in that Act is to affect any person's status, or the right of any person to be admitted, as a freeman of an existing borough (referred to in s 248 as a city or town): see s 248(1). As to the meaning of 'existing' see PARA 6 note 8.

8 That roll must be kept by the proper officer of the relevant district council (ie the council of the district which comprises the whole or greater part of the city or town): see the Local Government Act 1972 s 248(2). As to the proper officer see PARA 431. Section 248 has effect in Wales as if the references in s 248(2), (3) to the relevant district council were to the relevant principal council, and as if the reference in s 248(2) to the council of the district were a reference to the council of the principal area: s 248(6) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 54). As to the meaning of 'principal council' see PARA 24. Note that the operation of s 248(2), (3) is modified, in relation to a city or town the whole or part of which is situated in a county in which there are no district councils, by the Local Government Changes for England (Miscellaneous Provision) Regulations 1996, SI 1996/330, reg 5(2).

9 A claim for admission as a freeman must be examined by the chairman of the relevant district council (see note 8); and, if a person's claim is established, his name must be entered on the roll of freemen: see the Local Government Act 1972 s 248(3).

10 The misuse of corporate funds and property before 1835 (see PARA 2) was so extensive that it is now uncertain to what extent the freemen were enjoying rights. It appears, however, from *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111, that claimants asserting their rights must aver that the rents, tolls and profits claimed were not nor ever had been or ought to have been held and applied to public purposes but were always enjoyed for the particular benefit of the freemen. See also *Stanley v Norwich Corpn* (1887) 3 TLR 506; *Nash v Coombs* (1868) 37 LJCh 600; *Leicester Borough (Deputies of Freemen) v Hewitt* (1893) 68 LT 201, DC.

Note that corporate land (defined in the Local Government Act 1933 s 305 (repealed), as land belonging to, or held in trust for, or to be acquired by or held in trust for, a municipal corporation otherwise than for an express statutory purpose) was abolished as such by the reorganisation legislation under the Local Government Act 1972 and in effect converted into land held for statutory purposes: see PARA 8.

11 After 31 March 1974 special provision is made for the following persons: (1) a freeman of a city or town (see note 9) (Local Government Act 1972 s 248(4)(a)); (2) any person who by marriage, descent, employment or otherwise is or has been related to or associated with a freeman of a city or town (s 248(4)(b)); and (3) any person who is or has been related by marriage to the widow or a child of a freeman of a city or town (s 248(4)(c)). Any of these persons is to have and enjoy the same rights, whether in respect of property or otherwise, as were held and enjoyed on that date by a freeman of that city or town (or by persons so related or associated): see s 248(4). Further, a person who is on 1 April 1974 or becomes thereafter an inhabitant of a city or town is, as such, to have and enjoy the same rights, whether in respect of property or otherwise, as were held and enjoyed immediately before that date by an inhabitant of that city or town: s 248(5).

UPDATE

110 Freemen and inhabitants of former boroughs

NOTE 7--Local Government Act 1972 s 248(1) amended, s 248(1A)-(1D) (local freedoms), Sch 28A (amendments of laws relating to freedoms of cities and towns) added: Local Democracy, Economic Development and Construction Act 2009 ss 27, 28.

NOTES 8, 9, 11--Local Government Act 1972 s 248(2)-(4) amended: Local Democracy, Economic Development and Construction Act 2009 s 28(4).

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111. Honorary aldermen and freemen.

A principal council¹ may confer² the title of honorary aldermen on persons who have, in the opinion of the council, rendered eminent services to the council³ as past members of that council, but who are not then members of the council⁴. No honorary alderman, while serving as a member of the council, is entitled to be addressed as alderman or to attend or take part in any civic ceremonies of the council as an alderman⁵. An honorary alderman of a principal

council may attend and take part in such civic ceremonies as the council may from time to time decide⁶, but does not, as such, have the right:

- 189 (1) to attend meetings of the council or a committee of the council (including a joint committee upon which it is represented)⁷; or
- 190 (2) to receive allowances or other payments⁸.

The council of a London borough or a district having the status of a city, borough or royal borough⁹ or any parish or community¹⁰ having by grant under the royal prerogative¹¹ the status of city and any parish or community entitled by such grant to be called and styled a royal town may admit¹² to be honorary freemen of the city, borough, royal borough, parish or community persons of distinction and persons who have, in the opinion of the council, rendered eminent services to the city, borough, royal borough, parish or community¹³. A principal council in Wales may admit¹⁴ to be honorary freemen of the county or county borough persons of distinction and persons who have, in the opinion of the council, rendered eminent services to the county or county borough¹⁵. The admission of a person to be an honorary freeman does not confer any rights¹⁶ on him¹⁷.

A council may spend such reasonable sum as it thinks fit for the purpose of presenting an address or a casket containing an address to a person upon whom it has conferred the title of honorary alderman or admitted to be an honorary freeman¹⁸.

1 As to the meaning of 'principal council' see PARA 23.

2 le by a resolution passed by not less than two-thirds of the members voting on it at a meeting of the council specially convened for the purpose with notice of the object: see the Local Government Act 1972 s 249(1). As to members see PARA 117 et seq. As to meetings see PARA 619 et seq.

3 Services rendered to the council of an existing county, county borough, borough or urban or rural district the area of which became wholly or partly included in a new county or district are to be treated for these purposes as services rendered to the council of the new county or district, as the case may be: Local Government Act 1972 s 249(3). As to the meaning of 'existing' see PARA 6 note 8; and as to the meaning of 'new' see PARA 10 note 7.

4 Local Government Act 1972 s 249(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 9(2)). Where a council is to be dissolved by virtue of an order under s 7 (see PARA 61) it may elect as honorary aldermen not only past members of the council but also serving members (Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008, SI 2008/2867, reg 32(1)) and where such a council has been so dissolved honorary aldermen of that council may become honorary alderman of the successor council and, where there is more than one successor council, those persons may become honorary aldermen of one of the successor councils or of another local authority, depending on the location of the electoral area for which the person was last returned as a councillor of the dissolved council (Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008, SI 2008/2867, reg 32(2), (3)).

5 Local Government Act 1972 s 249(2) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 9(3)).

6 Local Government Act 1972 s 249(4).

7 Local Government Act 1972 s 249(4)(a).

8 Local Government Act 1972 s 249(4)(b). The reference in the text to allowances and payments is to any such allowances or other payments as are payable under ss 173-176: see PARAS 171-176.

9 See PARAS 25, 38, 107.

10 As to parishes see PARA 27 et seq; and as to communities see PARA 41 et seq.

11 As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46 et seq.

12 le by a resolution passed by not less than two-thirds of the members voting on it at a meeting of the council specially convened for the purpose with notice of the object: see the Local Government Act 1972 s 249(5) (as amended: see note 13).

13 Local Government Act 1972 s 249(5) (amended by the Local Government, Planning and Land Act 1980 s 180). A person who, before the reorganisation date, has been admitted as an honorary freeman of a local government area that is abolished by virtue of an order under the Local Government and Public Involvement in Health Act 2007 s 7 (see PARA 61) must, on that date, be treated as having been admitted as an honorary freeman of the abolished area, notwithstanding that the area is not on that date an area to which persons may be admitted as honorary freeman: see the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008, SI 2008/2867, reg 33.

14 le by such a resolution as is required by the Local Government Act 1972 s 249(5) (as amended): see note 13.

15 Local Government Act 1972 s 249(7) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 55).

16 le any such rights as are referred to in the Local Government Act 1972 s 248(4): see PARA 110.

17 Local Government Act 1972 s 249(5), (8) (s 249(5) as amended (see note 13); and s 249(8) added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 55).

18 See the Local Government Act 1972 s 249(6) (amended by the Local Government, Planning and Land Act 1980 s 180); and the Local Government Act 1972 s 249(9) (added by the Local Government (Wales) Act 1994 Sch 15 paras 1, 55).

UPDATE

111 Honorary aldermen and freemen

TEXT AND NOTES--Local Government Act 1972 s 249(1), (2), (4) amended, s 249(4A) added, s 249(5)-(9) substituted: Local Democracy, Economic Development and Construction Act 2009 s 29.

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112. Armorial bearings.

Many local authorities existing prior to 1 April 1974¹ bore and used armorial bearings either in accordance with ancient customary usage extending over many centuries or in accordance with a specific grant by the Royal College of Arms². Her Majesty may by Order in Council authorise any new local authority³ specified in the Order to bear and use any specified armorial bearings which were lawfully borne and used by an existing⁴ local authority immediately before 1 April 1974⁵. A local authority to which any insignia of a borough abolished under the reorganisation provisions of the Local Government Act 1972 has been transferred⁶ must if practicable preserve them in the area of the borough as it existed immediately before 1 April 1974⁷.

1 le the date on which the reorganisation of local government under the Local Government Act 1972 came into effect: see PARA 5.

2 Arms may only be borne by virtue of ancestral right or of a grant made under lawful authority: see Squibb High Court of Chivalry (1959) pp 184-185; and **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 872. The arms used in certain ancient towns and cities can be evidenced as far back as the fourteenth century at least. The Officers of Arms were incorporated by Richard III in 1484 and again incorporated as the College of Arms by Philip and Mary

in 1556. The Earl Marshal's Court of Chivalry determines questions as to the right to arms: see **PEERAGES AND DIGNITIES** vol 79 (2008) PARA 874.

Arms were placed on buildings, furniture, insignia, plate, paintings, documents and other property and as such were transferred to the new authorities in pursuance of the transfer of property: see PARAS 8-9.

3 As to the meaning of 'local authority' see PARA 23. As to the meaning of 'new' see PARA 10 note 7.

4 As to the meaning of 'existing' see PARA 6 note 8.

5 See the Local Government Act 1972 s 247(1). Any such Order in Council must provide that before any armorial bearings of an existing local authority may be borne and used by a new local authority in accordance with the Order they must be exemplified according to the laws of arms and recorded in the College of Arms: Local Government Act 1972 s 247(2). The provisions of s 247(1), (2) also apply in relation to new principal councils in Wales and authorities which ceased to exist as a result of the Local Government (Wales) Act 1994, but as if the reference to 1 April 1974 were a reference to 1 April 1996: Local Government Act 1972 s 247(3) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 53). As to the meaning of 'principal council' see PARA 23. Orders in Council under these provisions, being local in nature, are not generally noted in this work, but see eg the Local Authorities (Armorial Bearings) Order 2006, SI 2006/3330; and the Local Authorities (Armorial Bearings) (Wales) Order 2005, SI 2005/1960.

To use arms, other than the royal arms, without a grant or other title is not unlawful in the sense that any penalty is attached. Arms, being in the nature of dignities, are not within the jurisdiction of the ordinary courts of law but within the jurisdiction of the Court of Chivalry: see *Earl Cowley v Countess Cowley* [1901] AC 450 at 456, HL; *Manchester Corp'n v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387 (where an order was made inhibiting the defendants from using the plaintiffs' arms because the defendants had gone so far as to use them on their seal, but reservations were expressed (obiter) as to using the machinery of the court in respect of arms on buildings and souvenirs).

6 Ie by virtue of the Local Government Act 1972 s 254(2)(a): see PARA 6. As to transfers see PARAS 8-9.

7 See the Local Government Act 1972 s 254(7); and PARA 8 note 12.

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113. Charter trustees.

In the case of certain cities or boroughs existing prior to 1 April 1974¹, the successor district council does not have the status of a borough² and no successor parish or community council³ has been established for the former city or borough. In those circumstances, and in order to provide a corporate body as successor to the former city or borough, the district councillors representing the area of the former city or borough constitute charter trustees⁴, who may each year elect a city or town mayor and deputy mayor from their number⁵. If an area or part of an area for which charter trustees have been constituted becomes, or becomes comprised in, a parish or a separate community council is established for a community consisting of such an area, these provisions cease to apply and the charter trustees cease to act⁶. However, where after 16 July 1985⁷ the area of any charter trustees becomes comprised in a borough⁸, the charter trustees constituted for that area are to continue in being without alteration of their powers⁹.

Any power to appoint local officers of dignity exercisable immediately before 1 April 1974 by the corporation is exercisable on and after that date by the charter trustees¹⁰. Charter trustees do not have executive powers or provide local government services, but they are responsible for historic and ceremonial property¹¹. The sums required to meet the expenses of charter trustees are chargeable on, but only on, the area for which the charter trustees act, and for the purpose of obtaining those sums the charter trustees may issue precepts to the council of the district in which that area is situated¹². Every cheque or other order for the payment of money

by charter trustees must be signed by two of them¹³, and charter trustees must keep such accounts as may be prescribed of their receipts and payments¹⁴.

Certain provisions of the Local Government Act 1972 are applied to charter trustees as if they were the council, or the members of the council, of a parish or community consisting of the area for which they act¹⁵.

1 Ie the date on which the reorganisation of local government under the Local Government Act 1972 came into effect: see PARA 5.

2 Ie by virtue of the Local Government Act 1972 s 245(1) or s 245(4): see PARA 25. As to the grant of borough status see PARAS 25, 38, 107.

3 As to parish councils see PARA 30; and as to community councils see PARA 42.

4 See the Local Government Act 1972 s 246(4)(a). But if there are less than three of these councillors, the district council must appoint additional trustees, from local government electors from the area, to make the number up to three: see s 246(4)(a). As to the meaning of 'local government elector' see PARA 127 note 2. Where part of a former city or borough becomes a parish, or part becomes comprised in a district not having the status, or entitled to the style, of a borough and that part does not become a parish, the orders may provide that the provisions of the Local Government Act 1972 s 246(4) are to apply to that part: see s 246(5). These orders, being local in nature, are not noted in this work.

5 See the Local Government Act 1972 s 246(4)(b).

6 Local Government Act 1972 s 246(8).

7 Ie the date of the passing of the Charter Trustees Act 1985.

8 Ie upon the grant of a charter under the Local Government Act 1972 s 245 (see PARA 25) conferring borough status, or the making of an order under Pt IV (ss 53-78) (see PARA 77 et seq).

9 See the Charter Trustees Act 1985 s 1(1). Where charter trustees have been constituted for an area which is altered by an order under the Local Government Act 1972 Pt IV (ss 53-78) (see PARA 77 et seq) and the Local Government Act 1972 s 246(8) does not apply in relation to the alteration, the order may make such provision with respect to the charter trustees as may appear to the Secretary of State to be appropriate: s 246(9) (amended by the Charter Trustees Act 1985 s 1(2)). Nothing in the Charter Trustees Act 1985 s 1 affects any charter granted under the Local Government Act 1972 s 245 (see PARA 25): Charter Trustees Act 1985 s 1(3).

10 See the Local Government Act 1972 s 246(4)(c); and PARA 108.

11 Eg charters, insignia and plate.

12 Local Government Act 1972 s 246(10). Where the amount of the income received by charter trustees in any year from their property exceeds any expenditure incurred in connection with that property, the trustees must pay the excess to the rating authority for the rating area in which the area for which the charter trustees act is situated to their area: see s 246(11). As to rating authorities and areas see **RATING AND COUNCIL TAX**.

13 Local Government Act 1972 s 246(12).

14 Local Government Act 1972 s 246(13).

15 See the Local Government Act 1972 s 246(15), (16) (s 246(15) amended by the Local Government Finance Act 1982 s 34, Sch 5 para 5(5); and the Audit Commission Act 1998 s 54(1), Sch 3 para 3(5)). See also the Local Government Act 1972 s 246(14); and PARA 108.

As to charter trustees see further the Charter Trustees Order 1974, SI 1974/176 (amended by SI 2004/533); the Charter Trustees Regulations 1996, SI 1996/263 (amended by SI 1996/610; SI 1999/545 and SI 2004/533) and the Charter Trustees Regulations 2009, SI 2009/467.

114. Confederation of the Cinque Ports.

The district council, town council¹ or charter trustees² for any area being a port, ancient town or corporate unit of the Confederation of the Cinque Ports may exercise the functions in relation to that confederation which were immediately before 1 April 1974³ exercised by the corporation for that area⁴. In the case of certain of these areas, upon borough status being conferred⁵, provision is made to establish special cinque port trustees or corporate trustees to succeed the charter trustees⁶.

1 For these purposes, 'town council' means the council of a parish having the status of a town by virtue of a resolution under the Local Government Act 1972 s 245(6) (see PARA 28); see the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 14. As to areas and authorities in England see PARA 24 et seq.

2 As to charter trustees see PARA 113.

3 I.e. the date on which the reorganisation of local government under the Local Government Act 1972 came into effect: see PARA 5.

4 Local Authorities etc (Miscellaneous Provision) (No 2) Order 1974, SI 1974/595, art 14. The Cinque Ports are Dover, Hastings, Sandwich, Romney and Hythe, plus the two ancient towns of Rye and Winchelsea. A number of other boroughs are corporate members of the Confederation of the Cinque Ports.

5 See PARAS 25, 107.

6 See the Local Authorities (Miscellaneous Provision) Order 1975, SI 1975/244, art 6. If any area to which these provisions apply becomes a parish, these provisions cease to apply and the cinque port trustees or corporate trustees cease to act: see art 6(8).

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115. Judicial matters, the lieutenancy and sheriffs.

For the purposes of commissions of the peace and the law relating to justices of the peace¹, magistrates' courts², the custos rotulorum³, lieutenants⁴, sheriffs⁵ and matters connected with any of those matters, the Local Government Act 1972 substituted new counties⁶ for counties of any other description⁷. Provisions relating to the lieutenancy have now been consolidated by the Lieutenancies Act 1997⁸. Sheriffs appointed for a county or Greater London were restyled high sheriffs⁹, and the office of sheriff formerly the subject of appointment by the corporation of certain cities and boroughs¹⁰ became an office of dignity¹¹.

1 See **MAGISTRATES**.

2 See **MAGISTRATES**.

3 The office of custos rotulorum is almost invariably united with that of lord lieutenant: see **MAGISTRATES**. The duty of a principal council to make proper arrangements for the care of documents is without prejudice to the powers of the custos rotulorum to give directions as to the county's documents: see the Local Government Act 1972 s 224; and PARA 536.

4 As to lieutenants see PARA 116.

5 As to sheriffs see **SHERIFFS**. The Local Government (Wales) Act 1994 makes provision for changes to be made with respect to the area for which any sheriff may be appointed, in the light of the changes made by that Act with respect to the areas of local authorities in Wales: see s 62; and **SHERIFFS**.

6 As to the meaning of 'county' see PARA 24 note 5. As to the meaning of 'new' see PARA 10 note 7. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

7 Local Government Act 1972 s 216(1). For the purposes of ss 216, 219, the Isles of Scilly are deemed to form part of the county of Cornwall: s 216(2) (amended by the Justices of the Peace Act 1979 s 71, Sch 3). As to the Council of the Isles of Scilly see PARA 36.

8 See the Lieutenancies Act 1997; and PARA 116. To overcome the difficulties which would otherwise exist in consequence of the unitary local government regime in certain parts of England and Wales, the Lieutenancies Act 1997 identifies the areas which constitute counties: see s 1(4), Sch 1; and PARA 116 note 1. For transitional provisions see s 8, Sch 2.

9 See the Local Government Act 1972 s 219(1); and **SHERIFFS** vol 42 (Reissue) PARA 1101 et seq. As to under-sheriffs see **SHERIFFS** vol 42 (Reissue) PARA 1111 et seq.

10 As to the former duty of certain corporations to appoint a sheriff see the Municipal Corporations Act 1835 s 61 (repealed); and the Municipal Corporations Act 1882 s 170 (repealed). The repeal, by the Local Government Act 1972 s 272(1), Sch 30, of the Municipal Corporations Act 1882 s 170 terminated the office of sheriff as an executive office in cities and boroughs.

11 See the Local Government Act 1972 s 246(2)(a) (amended by the Charter Trustees Act 1985 s 1(2)). As to the appointment of officers of dignity see PARA 108.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/1. THE LEGISLATION, AREAS AND AUTHORITIES/(5) CIVIC RIGHTS AND PRIVILEGES; OFFICERS OF DIGNITY AND THE LIEUTENANCY/116. Lieutenancies.

116. Lieutenancies.

A lord lieutenant must be appointed by Her Majesty for each county in England and each county in Wales¹. Her Majesty may appoint lieutenants, in addition to the lord lieutenant, for any county².

The lord lieutenant of a county must appoint such persons as he thinks fit to be his deputy lieutenants³. A person may only be appointed as a deputy lieutenant of a county if:

- 191 (1) he is shown to have rendered appropriate service⁴; and
- 192 (2) he has a place of residence in, or within seven miles from the boundary of, that county⁵.

The lord lieutenant of a county must notify to Her Majesty the name of any person whom he proposes to appoint as a deputy lieutenant; and a commission as deputy lieutenant may not be granted to that person until the lord lieutenant has been informed by the Lord Chancellor that Her Majesty does not disapprove of the granting of the commission⁶. A commission as deputy lieutenant of a county is not vacated by reason that the person who granted it dies or otherwise ceases to hold office as lord lieutenant⁷. A commission as deputy lieutenant of a county may be revoked by the lord lieutenant of that county; and the lord lieutenant must revoke the commission forthwith on being informed of Her Majesty's pleasure that it be revoked⁸.

The lord lieutenant of a county may, with Her Majesty's approval, appoint a lieutenant or deputy lieutenant of that county as his vice lord lieutenant⁹. If a lord lieutenant who has appointed a vice lord lieutenant dies or otherwise ceases to hold office, the commission of the vice lord lieutenant is vacated on the appointment of a new lord lieutenant for the county

concerned¹⁰. A commission as vice lord lieutenant of a county may, with the approval of Her Majesty, be revoked by the lord lieutenant who granted it; and the lord lieutenant must revoke the commission forthwith on being informed of Her Majesty's pleasure that it be revoked¹¹.

Her Majesty may issue commissions of lieutenancy in respect of the City of London¹² to such persons as she thinks fit to be the Commissioners of Lieutenancy for the City of London¹³.

There is to be a clerk of the lieutenancy for each county, appointed by the lord lieutenant¹⁴.

The lord lieutenant, lieutenants (if any) and deputy lieutenants of a county have such functions and privileges (whether provided for under any enactment or otherwise) as are for the time being exercisable by or vested in the lord lieutenant, lieutenants and deputy lieutenants respectively of that county¹⁵.

If (a) the lord lieutenant of a county is absent from the county, sick or otherwise unable to act; or (b) there is a vacancy in the office of lord lieutenant for a county, then the vice lord lieutenant of that county is to stand for all purposes in the lord lieutenant's place and, accordingly, may do anything which may be done by the lord lieutenant¹⁶. There is also a general power under which Her Majesty may authorise any three deputy lieutenants or lieutenants of a county to act as its lord lieutenant, if (i) the lord lieutenant of the county is absent from the United Kingdom¹⁷, sick or otherwise unable to act; or (ii) there is a vacancy in the office of lord lieutenant of the county¹⁸. During the period for which they are authorised to act, the persons so authorised are to stand for all purposes in the lord lieutenant's place and, accordingly, may do anything which may be done by the lord lieutenant¹⁹.

1 Lieutenancies Act 1997 s 1(1). For the areas which constitute counties for the purposes of the lieutenancies see s 1(4), Sch 1 (amended by SI 1997/1992).

Her Majesty may by Order in Council make such amendments in the Lieutenancies Act 1997 s 1 and Sch 1, with respect to the area for which any lord lieutenant or lieutenant may be appointed, as Her Majesty considers appropriate in the light of the changes made by or under the Local Government (Wales) Act 1994 with respect to the areas of local authorities in Wales: s 61(2) (amended by the Lieutenancies Act 1997 s 8(1)). Any such order may make such incidental, consequential, transitional or supplemental provision as appears to Her Majesty to be necessary or expedient: see the Local Government (Wales) Act 1994 s 61(3) (amended by the Lieutenancies Act 1997 s 8(1)).

2 Lieutenancies Act 1997 s 1(3).

3 Lieutenancies Act 1997 s 2(1).

4 Lieutenancies Act 1997 s 2(2)(a). 'Appropriate service' means either worthy service as a member of, or in a civil capacity in connection with, Her Majesty's naval, military or air forces or such other service as makes a person suitable for appointment as a deputy lieutenant: s 2(3).

5 Lieutenancies Act 1997 s 2(2)(b).

6 Lieutenancies Act 1997 s 2(4) (amended by SI 2001/3500). The clerk of the lieutenancy (see the text and note 14) of a county must arrange for the publication in the London Gazette of the names of the persons appointed deputy lieutenants for that county, with the dates of their commissions: Lieutenancies Act 1997 s 2(7).

7 Lieutenancies Act 1997 s 2(5).

8 Lieutenancies Act 1997 s 2(6).

9 Lieutenancies Act 1997 s 3(1).

10 Lieutenancies Act 1997 s 3(2).

11 Lieutenancies Act 1997 s 3(3).

12 For the purposes of the law relating to, or to matters connected with, the lieutenancies, the City of London includes the Inner Temple and the Middle Temple: Lieutenancies Act 1997 s 7(5).

13 Lieutenancies Act 1997 s 7(1). For the purposes of the application of ss 5, 6 (see the text and notes 14, 15) to the City of London, the commissioners are to be treated as if they were the lord lieutenant of a county: s 7(2).

Nothing in the Lieutenancies Act 1997 affects the raising and levying of the trophy tax in the City of London or any other functions or privileges of the commissioners (whether provided for under any enactment or otherwise): s 7(3). The proceeds of the trophy tax may be applied by the commissioners (if they see fit to do so) for any of the purposes of a territorial and volunteer reserve association established under the Reserve Forces Act 1996 Pt XI (ss 110-119) (see **ARMED FORCES**) for an area including the City of London: Lieutenancies Act 1997 s 7(4). See further **LONDON GOVERNMENT; ARMED FORCES**.

14 Lieutenancies Act 1997 s 5(1). The lord lieutenant of a county may revoke the appointment of the clerk of the lieutenancy: s 5(2).

15 Lieutenancies Act 1997 s 6.

16 Lieutenancies Act 1997 s 3(4).

17 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

18 Lieutenancies Act 1997 s 4(1).

19 Lieutenancies Act 1997 s 4(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/117. Qualification.

2. MEMBERS OF LOCAL AUTHORITIES

(1) QUALIFICATION AND DISQUALIFICATION

117. Qualification.

Unless disqualified¹, a person is qualified to be elected² as, and to be, a member of a local authority³ if he is a qualifying Commonwealth citizen⁴ or a citizen of the Republic of Ireland or a relevant citizen of the European Union⁵ and on the relevant day⁶ he has attained the age of 18 years⁷ and (1) on that day he is and thereafter continues to be a local government elector⁸ for the area of the authority⁹; or (2) he has during the whole of the 12 months preceding that day occupied as an owner or tenant any land¹⁰ or other premises¹¹ in that area¹²; or (3) his principal or only place of work during that 12 months has been in that area¹³; or (4) he has during the whole of those 12 months resided in that area¹⁴; or (5) in the case of a member of a parish or community council he has during the whole of those 12 months resided either in the parish or community or within three miles of it¹⁵. On ceasing to hold office he is eligible for re-election, unless disqualified or not qualified¹⁶.

1 He by virtue of the Local Government Act 1972 or any other enactment: see PARA 119.

2 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

3 As to the meaning of 'local authority' see PARA 23.

4 For these purposes, a person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either (1) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom see (**BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 86 et seq); or (2) is

such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of the 1971 Act (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 86): Local Government Act 1972 s 79(2A). A person is not a qualifying Commonwealth citizen by virtue of head (1) above if he does not require leave to enter or remain in the United Kingdom by virtue only of the Immigration Act 1971 s 8 (exceptions to requirement for leave in special cases: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 88 et seq): Local Government Act 1972 s 79(2C) (s 79(2B), (2C) added by the Electoral Administration Act 2006 Sch 1, para 43(1), (4)).

5 The Local Government Act 1972 uses the expression 'citizen of the Union' which must be construed in accordance with the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 17(1) (formerly art 8(1) and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); and 'relevant citizen of the Union' means such a citizen who is not a qualifying Commonwealth citizen or a citizen of the Republic of Ireland: Local Government Act 1972 s 79(2A) (added by the Local Government Elections (Changes to the Franchise and Qualifications of Members) Regulations 1995, SI 1995/1948, reg 3; amended by the Electoral Administration Act 2006 Sch 1, para 43(1), (3)).

6 The 'relevant day' in relation to any candidate means, except in the case of an election not preceded by the nomination of candidates, the day on which he is nominated as a candidate and also, if there is a poll, the day of election: Local Government Act 1972 s 79(2)(a). In that excepted case, the 'relevant day' is the day of election: s 79(2)(b).

7 Local Government Act 1972 s 79(1) (amended by the Electoral Administration Act 2006 ss 17(4), 18(6), Sch 1 para 43(1), (2); and the Local Government and Public Involvement in Health Act 2007 ss 74(1), 241, Sch 3 paras 1, 4, Sch 18 Pt 3).

8 As to the meaning of 'local government elector' see PARA 127 note 2.

9 Local Government Act 1972 s 79(1)(a). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

10 As to the meaning of 'land' see PARA 509 note 4.

11 'Premises' includes easements and other incorporeal hereditaments appurtenant to land: *Whitley v Stumbles* [1930] AC 544 at 547, HL, per Viscount Hailsham. See also *Frost v Caslon* [1929] 2 KB 138 at 147, CA, per Scrutton LJ, who said that the words 'any land or premises' were very wide and would include any piece of land or any kind of structure or building of whatsoever kind or any part thereof provided it was capable of being occupied.

12 Local Government Act 1972 s 79(1)(b).

13 Local Government Act 1972 s 79(1)(c). The phrase 'principal or only place of work' is to be given its natural and ordinary meaning and may embrace work carried out as a councillor; 'work' has a wider meaning than 'business' or 'employment'; and constituency work may suffice, as the phrase 'principal or only place of work' does not impose a requirement that the candidate should have a personal interest in the area: *Parker v Yeo* (1992) 90 LGR 645, CA.

14 Local Government Act 1972 s 79(1)(d). The word 'residence' does not have a technical meaning, but will generally connote a degree of permanence; it is possible for a person to have several residences, but a temporary residence at a place does not make a person a resident of that place; similarly, temporary absence from a place does not deprive a person of his residency of that place: *Fox v Stirk and Bristol Electoral Registration Officer* [1970] 2 QB 463, [1970] 3 All ER 7, CA. See also *R v Mayor of Exeter (Wescomb's Case)* (1868) LR 4 QB 110, DC; *R v Mayor of Exeter (Dipstale's Case)* (1868) LR 4 QB 114, DC; *Whithorn v Thomas* (1844) 9 JP 89; *R v Vicar and Churchwardens of Bredwarding, ex p Burton-Phillipson* [1920] 1 KB 47; *Barlow v Smith* (1892) 9 TLR 57, DC; *Stanford v Williams* (1899) 80 LT 490, DC; *Ward v Kingston-upon-Hull* [1993] RA 71, QBD.

15 Local Government Act 1972 s 79(1)(e).

16 This is the effect of the Local Government Act 1972 s 79(1) (see the text and notes 1-15).

118. Members of joint authorities.

The number of members to be appointed to a joint authority¹ by a constituent council is specified for each council². The Secretary of State³ may by order make alterations in the numbers for the time being specified, including alterations resulting in an increase or decrease in the total number of members of any joint authority⁴. The Secretary of State must consult a joint authority's constituent councils before making any such order in respect of that authority⁵.

A constituent council may at any time terminate the appointment of a person appointed by it to a joint authority and appoint another member of the council in his place⁶.

The appointment of a person to a joint authority by a constituent council terminates if he ceases to be a member of the council⁷. Where a vacancy among the persons appointed to a joint authority by a constituent council occurs for any other reason, the joint authority must give notice of that fact to the constituent council⁸. Where a vacancy occurs among the persons appointed to a joint authority by a constituent council, that council must not later than one month after the relevant date⁹ appoint another member of the council to fill the vacancy¹⁰.

Where a person is appointed to a joint authority by a constituent council and before his appointment takes effect he ceases to be a member of that council, or otherwise becomes disqualified for appointment, that council must as soon as practicable replace his appointment by a further appointment¹¹.

As soon as practicable after receiving notice from a constituent council that it has made an appointment, or that it has terminated an appointment, the authority to which the appointment was made must give public notice of the fact that the appointment has been made or terminated and of the name of the person concerned¹².

1 As to the meaning of 'joint authority' see PARA 47 note 1.

2 See the Local Government Act 1985 s 29(1), Sch 10 (s 29(1) amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; and the Local Government Act 1985 Sch 10 amended by the Police and Magistrates' Courts Act 1994 Sch 9 Pt I; the Greater London Authority Act 1999 ss 328, 423, Sch 29 Pt I, Sch 34 Pt VIII; the Local Transport Act 2008 s 77(5), Sch 4 Pt 4 para 53; SI 1995/1522; SI 2006/582; and SI 2008/566).

As to members of local authorities generally see PARA 117 et seq.

3 As to the Secretary of State see PARA 96.

4 See the Local Government Act 1985 s 29(2). In making any alteration in the number of members to be appointed to a joint authority by any of its constituent councils, the Secretary of State must have regard to the number of local government electors in the areas of those councils respectively: s 29(3) (amended by the Police and Magistrates' Courts Act 1994 Sch 9 Pt I). As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by virtue of the Local Government Act 1985 s 105(2).

As to the orders that have been made under s 29 see the Greater Manchester Passenger Transport Authority (Increase in Number of Members) Order 1995, SI 1995/1522; Tyne and Wear Passenger Transport Authority (Increase in Number of Members) Order 2006, SI 2006/582; Tyne and Wear Passenger Transport Authority (Increase in Number of Members) Order 2008, SI 2008/566.

5 Local Government Act 1985 s 29(4).

6 Local Government Act 1985 s 31(1). Where a constituent council exercises its powers under s 31, it must give notice of the new appointment and of the termination of the previous appointment to the authority to which those appointments were made: s 31(2)(a). Subject to s 31(3) and to s 32(5), the new appointment takes effect, and the previous appointment terminates, at the end of one month from the date on which the notice is given: s 31(2)(b) (amended by the Local Government Act 1986 s 10(2)).

Where a constituent council exercises its powers under the Local Government Act 1985 s 31 to replace a person who has continued to be a member of a joint authority by virtue of s 32(1A) (see note 7) and notice is given not later than seven days after the council's annual meeting next following his retirement and re-election, his appointment terminates and the new appointment takes effect upon the notice being given: s 31(3) (added by the Local Government Act 1986 s 10(2)).

So much of the Local Government Act 1985 s 31(2)(b) as provides that the previous appointment is to terminate at the end of the period there mentioned is not to be construed as precluding its earlier termination by virtue of s 32(1) or for any other reason (see s 32(5)); but in that event: (1) the new appointment and the notice of it given under s 31 is to be treated as a sufficient compliance with s 32(3) (see the text and note 10) (see s 32(5)(a)); and (2) the new appointment takes effect on the termination of the previous appointment or on the giving of that notice, whichever is the later (see s 32(5)(b)). For the purposes of s 32(5)(b), an appointment which terminates by virtue of s 32(1) (see the text and note 7) is to be treated as terminating when notice of that fact is given in accordance with that provision: s 32(6).

7 Local Government Act 1985 s 32(1). Where a person's appointment terminates by virtue of this provision, the constituent council must as soon as practicable give notice of that fact to the authority to which he was appointed: s 32(1).

For the purposes of s 32, a person is not to be treated as ceasing to be a member of a constituent council where he retires by virtue of the Local Government Act 1972 s 7(3) (retirement of metropolitan district councillors: see PARA 129), or Sch 2 para 6(3) (retirement of London borough councillors), and is re-elected to membership of the council not later than the day of his retirement: Local Government Act 1985 s 32(1A) (added by the Local Government Act 1986 s 10(1)).

8 Local Government Act 1985 s 32(2). The notice must be given: (1) in a case where the authority declares the office to be vacant, immediately after the declaration (see s 32(2)(a)); (2) in a case where the High Court declares the office to be vacant, as soon as practicable after the date of the declaration (see s 32(2)(b)); and (3) in the case of resignation, as soon as practicable after the date of receipt of the notice of resignation by the officer to whom it is required to be delivered (see s 32(2)(c)).

9 'Relevant date' means, in a case within the Local Government Act 1985 s 32(1) (see the text and note 7), the date on which the person in question ceased to be a member of the constituent council and, in a case within s 32(2) (see the text and note 8), the date on which notice of the vacancy is given to the constituent council: s 32(4).

10 Local Government Act 1985 s 32(3)(a). The council must give notice of the appointment to the joint authority: s 32(3)(b). Any appointment made under s 32(3) takes effect when notice of the appointment is given: see s 32(3).

11 Local Government Act 1985 s 32(7). The council must give notice of the further appointment to the joint authority: s 32(7). The further appointment takes effect when the original appointment would have taken effect or on the giving of the notice, whichever is the later: s 32(7).

12 Local Government Act 1985 s 36 (amended by the Police and Magistrates' Courts Act 1994 Sch 9 Pt I).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2.
MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/119.
Disqualification.

119. Disqualification.

Under the Local Government Act 1972 a person is disqualified for being elected¹ or being a member of a local authority² if he³:

- 193 (1) holds any paid office or employment⁴ (other than the office of chairman, vice-chairman or deputy chairman or, in the case of a local authority which is operating executive arrangements⁵ which involve a leader and cabinet executive⁶, the office of executive leader⁷ or member of the executive), appointments or elections to which are or may be made or confirmed⁸ by the local authority or any committee or sub-committee⁹ of the authority or by a joint committee¹⁰ or national park authority¹¹ on which the authority is represented¹² or by any person holding any such office or employment¹³; or
- 194 (2) is a person who is subject to a bankruptcy restrictions order or an interim order¹⁴; or

- 195 (3) has within five years before the date of election, or since his election, been convicted in the United Kingdom¹⁵, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine¹⁶; or
- 196 (4) is disqualified for being elected or for being a member of that authority under the Representation of the People Act 1983¹⁷ or the Audit Commission Act 1998¹⁸.

As from a day to be appointed a person is disqualified for being elected or being a member of a local authority if he holds any employment in an entity which is under the control of the local authority¹⁹.

A paid officer of a local authority who is employed under the direction of²⁰:

- 197 (a) a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority²¹; or
- 198 (b) a joint board²², joint authority²³, joint waste authority²⁴, or joint committee²⁵ on which the authority is represented and any member of which is so appointed²⁶,

is disqualified for being elected or being a member of that other local authority²⁷. A person is disqualified from becoming or remaining a member of a local authority if he holds a politically restricted post under that or any other local authority in Great Britain²⁸.

The election of a disqualified person may be challenged by petition²⁹ and proceedings may be brought against a person on the ground that he acted or claims to be entitled to act as a member of a local authority while disqualified for so acting³⁰.

1 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

2 Persons disqualified for membership of the local authority are also disqualified for membership of any committee (including a sub-committee) of that authority or being a representative of that authority on a joint committee (including a sub-committee) of the authority and another authority: see the Local Government Act 1972 s 104(1); and PARA 162. The rules are, however, modified in the case of a police authority and its committees and sub-committees: see s 107. As to the meaning of 'local authority' see PARA 23. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

3 Local Government Act 1972 s 80 (amended by the Local Government and Public Involvement in Health Act 2007 ss 74(1), 241, Sch 3 paras 1, 6, Sch 18 Pt 3).

4 'Employment' is not defined by the Local Government Act 1972. As to the nature of employment generally see **EMPLOYMENT**. See also *Partridge v Mallandaine* (1886) 18 QBD 276, DC; *Lecture League Ltd v LCC* (1913) 108 LT 924, DC.

5 As to executive arrangements see PARA 303 et seq.

6 As to leader and cabinet executives see PARA 330 et seq.

7 As to the meaning of 'executive leader' see PARA 327.

8 'Appointments which . . . may be made or confirmed' refer to those appointments the local authority are legally entitled to make or confirm and not the practical likelihood of them doing so: *Islington London Borough Council v Camp* [2004] LGR 58.

9 As to committees and sub-committees see PARA 369 et seq.

10 As to joint committees see PARA 380.

11 For the purposes of the Local Government Act 1972 s 80, a local authority is to be treated as represented on a national park authority if it is entitled to make any appointment of a local authority member of the national

park authority: s 80(2B) (added by the Environment Act 1995 s 78, Sch 10 para 10(1)). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

12 As to joint authorities see PARA 47 et seq. A panel of a company substantially independent of a local authority, which included a seconded employee of that authority and paid by the authority, did not constitute a joint authority: *R v Tower Hamlets London Borough Council, ex p Jalal* (1994) Times, 17 May.

13 Local Government Act 1972 s 80(1)(a) (amended by the Local Government Act 1985 s 84, Sch 14 PARA 3; the Local Government and Housing Act 1989 ss 1, 194, Sch 12 Pt II; the Local Government Act 2000 s 46, Sch 3 para 8; SI 2001/2237; and SI 2002/808). See *Islington London Borough Council v Camp* [2004] LGR 58. The disqualification does not depend on any mala fides, and once disqualified the member cannot be reinstated: *R v Tower Hamlets London Borough Council, ex p Jalal* (1994) Times, 17 May (appointment made on behalf of regeneration company by a panel, one member of which was a council employee; person appointed held to be not disqualified).

Where an officer is employed by one authority but has his wages paid by another, the disqualification may extend to both authorities: *R v Davies, ex p Penn* (1932) 96 JP 416, 30 LGR 419.

The Local Government Act 1972 s 80(1)(a) has effect in relation to a teacher in a school maintained by the local authority, who does not hold an employment falling within that provision, as it has effect in relation to a teacher in such a school who holds such an employment: s 80(3) (substituted by SI 1999/2267). This does not, however, operate so as to disqualify any person by reason of his being a teacher or otherwise employed in a school or other educational institution maintained or assisted by a county council for being a member of a district council by reason that the district council nominates members of the education committee of the county council: Local Government Act 1972 s 81(4)(a) (amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt II).

14 Local Government Act 1972 s 80(1)(b) (substituted by the Enterprise Act 2002 s 267(1)). A bankruptcy restrictions order or interim order is one governing post discharge restrictions and made under Insolvency Act 1986 s 281A, Sch 4A: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

15 As to the meaning of 'United Kingdom' see PARA 116 note 18.

16 Local Government Act 1972 s 80(1)(d). For the purposes of s 80(1)(d), the ordinary date on which the period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or the application is finally disposed of or abandoned or fails by reason of its non-prosecution is deemed to be the date of the conviction: s 80(5) (amended by the Local Government Finance Act 1982 s 38, Sch 6 Pt IV). If the election of a person disqualified for being elected by virtue of the Local Government Act 1972 s 80(1)(d) is not challenged by election petition within the period fixed by law, the election is deemed to have been good and valid: see the Representation of the People Act 1983 ss 48(2), 187(2); and **ELECTIONS AND REFERENDUMS**. Such prior disqualification cannot therefore disqualify for being a member of a local authority subsequent to the election. 'If he has within five years before the day of election' refers only to the disqualification for being elected and the words 'since election' refer to disqualification for being a member of a local authority: *Bishop v Deakin* [1936] Ch 409, [1936] 1 All ER 255. See also *Islington London Borough Council v Camp* [2004] LGR 58.

17 In the Representation of the People Act 1983 Pt III (ss 120-186): see **ELECTIONS AND REFERENDUMS**.

18 Local Government Act 1972 s 80(1)(e) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 12; the Audit Commission Act 1998 s 54(1), Sch 3 para 3(1); and prospectively amended by the Local Government Act 2000 s 107, Sch 5 para 8, Sch 6).

The reference to the Audit Commission Act 1998 is repealed by the Local Government Act 2000 s 107, Sch 5 para 8, Sch 6 in so far as it applies to England and to police authorities in Wales, and as from a day to be appointed, in so far as it applies to Wales for all remaining purposes. At the date at which this volume states the law no such day had been appointed.

19 Local Government Act 1972 s 80(1)(aa) (prospectively substituted by the Local Government and Public Involvement in Health Act 2007 s 216(2), Sch 14 para 2(1), (2)). The Local Government Act 1972 s 80(1)(aa) was prospectively added by the Local Government and Housing Act 1989 s 194, Sch 11 para 21, and prospectively substituted as noted above before being brought into force. As originally enacted a person is disqualified under the Local Government Act 1972 s 80(1)(aa) for being elected or being a member of a local authority if he holds any employment in a company which, in accordance with the Local Government and Housing Act 1989 Pt V (ss 67-73) other than s 73 (see PARA 405), is under the control of the local authority. At the date at which this volume states the law no such day had been appointed in either case. The Secretary of State or the Welsh Ministers may by order define for the purposes of the Local Government Act 1972 s 80(1)(aa) the reference in that provision to an 'entity under the control of' the authority mentioned there: Local Government and Public Involvement in Health Act 2007 ss 217(1)(b), 218(1)(a). At the date at which this volume states the law no such order had been made.

20 Local Government Act 1972 s 80(2).

21 Local Government Act 1972 s 80(2)(a).

22 The reference in the text to a joint board has effect as if it included a reference to a national park authority: Local Government Act 1972 s 80(2A) (added by the Environment Act 1995 Sch 10 para 10(1)). As to joint boards see PARA 10.

23 As to joint authorities see PARA 47 et seq.

24 As to joint waste authorities see PARA 51.

25 As to joint committees see PARA 380.

26 Local Government Act 1972 s 80(2)(b) (amended by the Local Government Act 1985 s 84, Sch 14 para 3; the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, paras 1, 3).

27 Local Government Act 1972 s 80(2). However, this does not operate so as to disqualify any person by reason of his being a teacher or otherwise employed in a school or other educational institution maintained or assisted by a county council for being a member of a district council by reason that the district council nominates members of the education committee of the county council: s 81(4)(a) (as amended: see note 11).

28 Local Government and Housing Act 1989 s 1; and PARA 120. As to the meaning of 'Great Britain' see PARA 116 note 18.

29 See the Representation of the People Act 1983 ss 127-135A; and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 760 et seq.

30 See the Local Government Act 1972 s 92; and PARA 301. Proceedings under s 92 are not barred by the Representation of the People Act 1983 s 127 (see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 760), as such proceedings do not constitute a challenge to the election itself: *Islington London Borough Council v Camp* [2004] LGR 58.

UPDATE

119 Disqualification

TEXT AND NOTE 26--Local Government Act 1972 s 80(2)(b) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 12.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/120. Disqualification and political restriction.

120. Disqualification and political restriction.

Under the Local Government Act 1972 a person is disqualified¹ from becoming, whether by election or otherwise, or remaining a member of a local authority² if he holds a politically restricted post³ under that local authority or any other local authority in Great Britain⁴.

1 As to disqualification under the Local Government Act 1972 see PARA 119.

2 So far as it has effect in relation to disqualification for election, the Local Government Act 1972 s 1 has effect with respect to any election occurring not less than two months after 1 March 1990 and, so far as it relates to becoming in any other way a member of a local authority, it has effect with respect to any action which, apart from these provisions, would result in a person becoming a member of the authority not less than two months after 1 March 1990: see s 1(7); and the Local Government and Housing Act 1989 (Commencement No 3) Order 1989, SI 1989/2445, art 5. If, immediately before the expiry of the period of two months referred to in the Local Government and Housing Act 1989 s 1(7), a person who is a member of a local authority holds a

politically restricted post under that or any other local authority, nothing in this provision applies to him until the expiry of the period for which he was elected or for which he otherwise became a member of the authority: s 1(8). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

3 As to the persons to be regarded as holding politically restricted posts under a local authority see PARA 122; and as to the exemption from political restriction see PARAS 123-124. The terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before 1 March 1990) are deemed to incorporate such requirements for restricting his political activities as may be prescribed for these purposes by regulations made by the Secretary of State or the Welsh Ministers: Local Government and Housing Act 1989 s 1(5). The regulations may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State or the Welsh Ministers consider appropriate and, without prejudice to s 190(1), may contain such exceptions for persons appointed in pursuance of s 9 (see PARA 432) as they think fit: s 1(6). As to the regulations made see the Local Government Officers (Political Restrictions) Regulations 1990, SI 1990/851 (amended by SI 1999/715; and SI 1999/1665). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

The restrictions imposed by the Local Government Officers (Political Restrictions) Regulations 1990, SI 1990/851 (as so amended) do not violate the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmnd 8969) art 10: *Ahmed v United Kingdom* [1999] IRLR 188, (1998) 5 BHRC 111, ECtHR.

4 Local Government and Housing Act 1989 s 1(1). Sections 1-3A have effect as if the Greater London Authority, Transport for London and the London Development Agency were each a local authority: see the Greater London Authority Act 1999 s 68(1), (2); and **LONDON GOVERNMENT**. Likewise, they have effect as if a national park authority were a local authority for the purposes of the Local Government and Housing Act 1989 Pt I: Environment Act 1995 s 63 Sch 7 para 7(4). As to the meaning of 'local authority' see PARA 23. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to the meaning of 'Great Britain' see PARA 116 note 18.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2.
MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/121.
Disqualification of members of joint authorities.

121. Disqualification of members of joint authorities.

A person is disqualified for being appointed or being a member of a joint authority¹ if he holds any paid office or employment (other than the office of chairman or vice-chairman², or in the case of a local authority operating executive³ arrangements⁴ which involve a leader and cabinet executive⁵, a person holding the office of executive leader⁶ or member of the executive), appointments or elections to which are or may be made or confirmed by the authority or any committee or sub-committee⁷ of the authority or by a joint committee⁸ on which the authority is represented or by any person holding any such office or employment or by an elected mayor⁹.

A paid officer¹⁰ of a joint authority who is employed under the direction of:

- 199 (1) a committee or sub-committee of the joint authority any member of which is appointed on the nomination of another joint authority or of a local authority¹¹; or
- 200 (2) a joint committee on which the joint authority is represented and any member of which is so appointed¹²,

is disqualified for being appointed or being a member of that other joint authority or for being elected or being a member of the local authority, as the case may be¹³.

A person who is for the time being a member, officer or servant of, or an officer or servant of a subsidiary¹⁴ of, the passenger transport executive¹⁵ for an area which is or was coterminous with the area of a metropolitan county is disqualified for being appointed or being a member of the Integrated Transport Authority¹⁶ for that county¹⁷.

- 1 As to the meaning of 'joint authority' see PARA 47 note 1. As to members of joint authorities see PARA 118. As to disqualification in relation to local authorities generally see PARA 119.
- 2 As to the chairman and vice-chairman of a joint authority see PARA 149.
- 3 As to the meaning of 'executive' see PARA 327; definition applied by the Local Government Act 1985 s 35(4) (added, in relation to England, by SI 2002/1057).
- 4 As to the meaning of 'executive arrangements' see PARA 303; definition applied by the Local Government Act 1985 s 35(4) (added, in relation to England, by SI 2002/1057).
- 5 For these purposes 'leader and cabinet executive' means (1) in relation to England, a leader and cabinet executive (England); and (2) in relation to Wales, a leader and cabinet executive (Wales): Local Government Act 1985 s 35(5) (added by the Local Government and Public Involvement in Health Act 2007 s 74(1), Sch 3 paras 18, 19(1), (3)). As to the meaning of 'leader and cabinet executive (England)' and 'leader and cabinet executive (Wales)' see PARA 327; definition applied by the Local Government Act 1985 s 35(4) (as so added).
- 6 As to the meaning of 'executive leader' see PARA 327; definition applied by the Local Government Act 1985 s 35(4) (added, in relation to England, by SI 2002/1057; amended by Local Government and Public Involvement in Health Act 2007 s 74(1), Sch 3 paras 18, 19(1), (2)).
- 7 As to committees and sub-committees see PARA 369 et seq.
- 8 As to joint committees see PARA 380.
- 9 Local Government Act 1985 s 35(1) (amended, in relation to England, by SI 2001/2237). As to the meaning of 'elected mayor' see PARA 320 note 4; definition applied by the Local Government Act 1985 s 35(4) (added, in relation to England, by SI 2002/1057).
- 10 As to local authority officers generally see PARA 425 et seq.
- 11 Local Government Act 1985 s 35(2)(a).
- 12 Local Government Act 1985 s 35(2)(b).
- 13 Local Government Act 1985 s 35(2). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.
- 14 le within the meaning of the Transport Act 1962: see **WATER AND WATERWAYS** vol 101 (2009) PARA 729 note 2.
- 15 As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247.
- 16 As to integrated transport authorities see PARA 49.
- 17 Local Government Act 1985 s 35(3) (amended by the Local Transport Act 2008 s 77, Sch 4 para 53).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/122. Politically restricted posts.

122. Politically restricted posts.

The following persons are regarded as holding politically restricted posts¹ under a local authority²: (1) persons designated³ as the head of an authority's paid service⁴; (2) statutory chief officers⁵; (3) non-statutory chief officers⁶; (4) deputy chief officers⁷; (5) monitoring officers⁸; (6) any person holding a post as an assistant for a political group⁹; and (7) any person not falling within heads (1) to (6) above whose post is for the time being listed by the authority¹⁰. Every local authority must prepare and maintain a list of such of the following posts under the authority as are not for the time being exempted¹¹:

- 201 (a) full-time posts, the annual rate of remuneration in respect of which is or exceeds a certain amount¹²;
- 202 (b) part-time posts, the annual rate of remuneration in respect of which would be or exceeds that amount if they were full-time posts in respect of which remuneration was paid at the same rate as for the part-time post¹³; and
- 203 (c) posts not falling within head (a) or head (b) above, the duties of which appear to the authority to consist in or involve one or both of the following¹⁴: (i) giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority is represented or, in relation to an authority operating executive arrangements, giving advice to the executive, or any committee of the executive, or any member of the executive who is also a member of the authority¹⁵; (ii) speaking on behalf of the authority on a regular basis to journalists or broadcasters¹⁶.

Local authorities had to deposit the first list prepared¹⁷ with the proper officer¹⁸ and must on subsequently making any modifications¹⁹ of that list deposit a revised list with the proper officer²⁰.

Every local authority in England must, in performing these duties, have regard to such general advice as may be given²¹ by the Secretary of State²². In Wales, the local authority must have regard to such general advice as may be given²³ by a person appointed for these purposes²⁴.

1 le for the purposes of the Local Government and Housing Act 1989 Pt I (ss 1-21).

2 Local Government and Housing Act 1989 s 2(1). As to the meaning of 'local authority' see PARA 23. As to the application of this section with modifications see PARA 120 note 4.

Nothing in the Local Government and Housing Act 1989 s 2 has the effect of: (1) requiring any person to be regarded as holding a politically restricted post by reason of his holding the post of head teacher or principal of a school, college or other educational institution or establishment which is maintained or assisted by a local education authority, or any other post as a teacher or lecturer in any such school, college, institution or establishment; or (2) requiring any such post to be included in any list prepared and maintained under s 2: s 2(10).

3 le designated under the Local Government and Housing Act 1989 s 4: see PARA 427.

4 Local Government and Housing Act 1989 s 2(1)(a). As to the head of the authority's paid service see PARA 427.

5 Local Government and Housing Act 1989 s 2(1)(b). For these purposes, 'statutory chief officers' means: (1) the director of children's services appointed under the Children Act 2004 s 18 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 190) and the director of adult social services appointed under the Local Authority Social Services Act 1970 s 6(A1) (in the case of a local authority in England) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1007); (2) the chief education officer appointed under the Education Act 1996 s 532 (in the case of a local authority in Wales) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 51); (3) the director of social services in the case of a local authority in Wales or chief social work officer appointed under the Local Authority Social Services Act 1970 s 6 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1007); and (4) the officer having responsibility, for the purposes of the Local Government Act 1972 s 151 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Local Government Act 1985 s 73 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Local Government Finance Act 1988 s 112 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Local Government and Housing Act 1989 s 6 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), or the Greater London Authority Act 1999 s 127(2) (see **LONDON GOVERNMENT**), for the administration of the authority's financial affairs: Local Government and Housing Act 1989 s 2(6) (amended by the Local Government etc (Scotland) Act 1994 s 180(1), (2), Sch 13 para 161(2), Sch 14; the Education Act 1996 s 582(1), Sch 37 para 95; the Greater London Authority Act 1999 s 127(8); the Fire and Rescue Services Act 2004 s 54, Sch 2; and the Children Act 2004 s 18(9), (10), Sch 2 para 3).

6 Local Government and Housing Act 1989 s 2(1)(c). For these purposes, 'non-statutory chief officer' means: (1) a person for whom the head of the authority's paid service is directly responsible; (2) a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the head of the authority's paid service; and (3) any person who, as respects all or most of the duties of his post, is

required to report directly or is directly accountable to the local authority itself or any committee or sub-committee of the authority: s 2(7). However, a person whose duties are solely secretarial or clerical or are otherwise in the nature of support services is not to be regarded as a non-statutory chief officer for the purposes of Pt I (ss 1-21): s 2(9). As to committees and sub-committees see PARA 369 et seq.

7 Local Government and Housing Act 1989 s 2(1)(d). For these purposes, 'deputy chief officer' means a person who as respects all or most of the duties of his post is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers: s 2(8). However, a person whose duties are solely secretarial or clerical or are otherwise in the nature of support services is not to be regarded as a deputy chief officer for the purposes of Pt I (ss 1-21): s 2(9).

8 Local Government and Housing Act 1989 s 2(1)(e). The reference in the text to a monitoring officer is to a monitoring officer designated under s 5: see PARA 429.

9 Local Government and Housing Act 1989 s 2(1)(f). The post referred to in the text is one to which an individual was appointed in pursuance of s 9: see PARAS 432-433.

10 Local Government and Housing Act 1989 s 2(1)(g). The reference in the text to a list is to a list prepared and maintained in accordance with s 2(2) (see the text and notes 11-14) and any directions under s 3 or 3A (see PARAS 123-124), or in accordance with the Local Government Act 1972 s 100G(2) (see PARA 667): Local Government and Housing Act 1989 s 2(1)(g) (amended by the Local Government and Public Involvement in Health Act 2007 s 203(1)(a)).

11 Local Government and Housing Act 1989 s 2(2). The exempted posts referred to in the text are those exempted under s 3 or 3A (see PARAS 123-124), posts for the time being listed under the Local Government Act 1972 s 100G(2) (see PARA 667) or posts of a description specified in regulations made by the Secretary of State or the Welsh Ministers for the purposes of the Local Government and Housing Act 1989 s 2: s 2(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 203(1)(a)). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

Regulations under the Local Government and Housing Act 1989 s 2 may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State or the Welsh Ministers consider appropriate: s 2(11). As to the regulations made see the Local Government (Politically Restricted Posts) (No 2) Regulations 1990, SI 1990/1447; and the Local Government (Politically Restricted Posts) (Wales) Regulations 2008, SI 2008/220.

12 Local Government and Housing Act 1989 s 2(2)(a). The amount referred to in the text is £19,500 or such higher amount as may be specified in or determined under regulations made by the Secretary of State: s 2(2)(a).

13 Local Government and Housing Act 1989 s 2(2)(b).

14 Local Government and Housing Act 1989 s 2(2)(c).

15 Local Government and Housing Act 1989 s 2(3)(a) (amended by SI 2001/2237; SI 2002/808). As to joint committees see PARA 380; and as to executive arrangements see PARA 303 et seq. The Secretary of State may, in relation to England, give such general advice with respect to the determination of questions arising by virtue of the Local Government and Housing Act 1989 s 2(3) as he considers appropriate: s 3B(1) (s 3B added by the Local Government and Public Involvement in Health Act 2007 s 202(2)). Before giving general advice under the Local Government and Housing Act 1989 s 3B the Secretary of State must consult such representatives of local government and such organisations appearing to him to represent employees in local government as he considers appropriate: s 3B(2) (as so added).

16 Local Government and Housing Act 1989 s 2(3)(b). See also note 15.

17 The first list had to be deposited before the expiry of the period of two months beginning with 29 November 1989: see the Local Government and Housing Act 1989 s 2(4); and the Local Government and Housing Act 1989 (Commencement No 2) Order 1989, SI 1989/2186, art 2.

18 As to proper officers see PARA 431; definition applied by the Local Government and Housing Act 1989 s 21(3).

19 'Modification' includes additions, alterations and omissions: Local Government and Housing Act 1989 s 21(3).

20 Local Government and Housing Act 1989 s 2(4).

21 Ie by virtue of the Local Government and Housing Act 1989 s 3B: see note 15.

22 Local Government and Housing Act 1989 s 2(5A) (added by the Local Government and Public Involvement in Health Act 2007 s 203(1)(c)).

23 le by virtue of the Local Government and Housing Act 1989 s 3(1)(b): see PARA 124.

24 Local Government and Housing Act 1989 s 2(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 203(1)(b)). The reference in the text to a person is to a person appointed under the Local Government and Housing Act 1989 s 3(1)(b): see PARA 124.

UPDATE

122 Politically restricted posts

TEXT AND NOTES 12-14--Heads (a), (b) omitted. Local Government and Housing Act 1989 s 2(2)(a), (b) repealed, s 2(2)(c) amended: Local Democracy, Economic Development and Construction Act 2009 s 30(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/123. Exemption from political restriction in England.

123. Exemption from political restriction in England.

The standards committee¹ of a local authority in England which is a relevant authority² must consider any application for exemption from political restriction, in respect of any post under the relevant authority, by the holder of that post³. If the standards committee is satisfied that the duties of the post do not include, on a regular basis, giving advice to, or speaking on behalf of, the authority to journalists or broadcasters⁴ the committee must direct: (1) that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post; and (2) that accordingly the post is not to be specified in the list maintained by the relevant authority⁵ or, as the case may be, is to be removed from that list⁶.

The committee may, on the application of any person or otherwise, give directions to the relevant authority requiring it to include a post in the list of politically restricted posts⁷ maintained by that authority⁸. It may not give a direction unless it is satisfied that the duties of the post include, on a regular basis, giving advice to, or speaking on behalf of, the authority to journalists or broadcasters⁹ and the post is neither in any list maintained by the relevant authority¹⁰, nor of a description specified in regulations¹¹.

Every relevant authority is under a duty to give its standards committee all such information as the committee may reasonably require¹², comply with any direction with respect to the list maintained by the authority¹³, and, on being given a direction¹⁴, notify the terms of that direction to the person who holds the post to which it relates¹⁵.

1 'Standards committee' means a committee established under the Local Government Act 2000 s 53(1) (see PARA 238); Local Government Act 1972 s 3A(10) (as added: see note 3).

2 As to the meaning of 'relevant authority' see PARA 232 note 4; definition applied by the Local Government and Housing Act 1989 s 3A(10) (as added: see note 3). As to the application of the Local Government and Housing Act 1989 s 3A with modifications see PARA 120 note 4.

The Secretary of State may make regulations requiring a local authority in England which is not a relevant authority to establish a committee to exercise the functions conferred on the standards committee of a local authority that is a relevant authority: s 3A(8). Such regulations may include provision: (1) applying any provisions of s 3A (with or without modification) where a committee has been established under the regulations; (2) applying (with or without modification) any provision of the Local Government Act 2000 s 53 or regulations

made under s 53(6) (see PARA 238): Local Government and Housing Act 1989 s 3A(9) (as added: see note 3). As to the Secretary of State see PARA 96. As to the meaning of 'modification' see PARA 122 note 19.

3 Local Government and Housing Act 1989 s 3A(1)(a) (s 3A added by the Local Government and Public Involvement in Health Act 2007 s 202(2)). Such an application may not be made unless: (1) the relevant authority has specified or is proposing to specify the post in the list maintained by it under the Local Government Act 1989 s 2(2) (see PARA 122); and (2) in the case of a post within the Local Government and Housing Act 1989 s 2(2)(a), (b) the relevant authority has certified whether or not that, in its opinion, the duties fall within s 2(3) (see PARA 122): s 3A(2). The relevant authority must give a certificate for the purposes of head (2) if requested to do so by the holder of that post: s 3A(2) (as so added). In determining whether or not the duties of a post fall within s 2(3) the standards committee must have regard to any general advice given by the Secretary of State under s 3B (see PARA 122): s 3A(5) (as so added). The standards committee must give priority, according to the time available before the election, to any application from a person who certifies that the application is made for the purpose of enabling him to be a candidate in a forthcoming election: s 3A(7) (as so added).

4 Ie the duties do not fall within Local Government and Housing Act 1989 s 2(3) (see PARA 122). In determining whether or not the duties of a post fall within s 2(3) the standards committee must have regard to any general advice given by the Secretary of State under s 3B (see PARA 122): s 3A(5) (as added: see note 3).

5 Ie the list maintained under the Local Government and Housing Act 1989 s 2(2) (see PARA 122).

6 Local Government and Housing Act 1989 s 3A(3) (as added: see note 3).

7 Ie the list maintained under the Local Government and Housing Act 1989 s 2(2) (see PARA 122).

8 Local Government and Housing Act 1989 s 3A(1)(b) (as added: see note 3).

9 Ie the duties fall within Local Government and Housing Act 1989 s 2(3) (see PARA 122). In determining whether or not the duties of a post fall within s 2(3) the standards committee must have regard to any general advice given by the Secretary of State under s 3B (see PARA 122): s 3A(5) (as added: see note 3).

10 Ie in accordance with the Local Government and Housing Act 1989 s 2(2) (see PARA 122) or the Local Government Act 1972 s 100G(2) (see PARA 667).

11 Local Government and Housing Act 1989 s 3A(4) (as added: see note 3). The regulations mentioned in the text refer to those made under s 2(2) (see PARA 122).

12 Local Government and Housing Act 1989 s 3A(6)(a) (as added: see note 3). The information referred to in the text is that which the authority may reasonably require for the purpose of carrying out its functions under s 3A: s 3A(6)(a) (as added: see note 3).

13 Local Government and Housing Act 1989 s 3A(6)(b) (as added: see note 3).

14 Ie a direction under the Local Government and Housing Act 1989 s 3A(1)(b): see the text and note 8.

15 Local Government and Housing Act 1989 s 3A(6)(c) (as added: see note 3).

UPDATE

123 Exemption from political restriction in England

NOTE 3--Local Government and Housing Act 1989 s 3A(2) amended: Local Democracy, Economic Development and Construction Act 2009 s 30(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/124. Exemption from political restriction in Wales.

124. Exemption from political restriction in Wales.

It is the duty of the Welsh Ministers¹ to appoint a person in relation to Wales: (1) to carry out certain functions in relation to political restriction²; and (2) to give such general advice with respect to the determination of certain questions relating to politically restricted posts³ as that person considers appropriate after consulting such representatives of local government and such organisations appearing to him to represent employees in local government as he considers appropriate⁴. The person appointed must consider any application for exemption from political restriction which is made to him in respect of any post under a local authority⁵ by the holder for the time being of that post⁶. In carrying out his functions, it is the duty of a person appointed to give priority, according to the time available before the election, to any application⁷ made by a person who certifies that it is made for the purpose of enabling him to be a candidate in a forthcoming election⁸. On the application of any person or otherwise, he may also give directions to a local authority requiring it to include a post in the list maintained by the authority⁹.

It is the duty of a local authority to give a person appointed all information as that person may reasonably require for the purpose of carrying out his functions¹⁰, to comply with any direction under this provision with respect to the list maintained by the authority¹¹ and, on being given a direction¹², to notify the terms of the direction to the holder for the time being of the post to which the direction relates¹³.

1 As to the Welsh Ministers see PARA 97.

2 Local Government and Housing Act 1989 s 3(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 202(1)(b)). The functions referred to in the text are those conferred by s 3(2)-(7): see the text and notes 6-13. As to political restriction see PARA 120 et seq.

3 I.e. questions arising by virtue of the Local Government and Housing Act 1989 s 2(3): see PARA 122.

4 Local Government and Housing Act 1989 s 3(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 202(1)(b)). The Secretary of State may also: (1) provide for the appointment of such members of staff to assist any person appointed under s 3(1), and to act on that person's behalf, as the Secretary of State may with the consent of the Treasury determine; (2) pay to or in respect of a person appointed under s 3(1) and members of such a person's staff such remuneration and such other sums by way of, or towards, the payment of pensions, allowances and gratuities as the Secretary of State may so determine; and (3) provide for a person appointed under s 3(1) and such a person's staff to hold office on such other terms as the Secretary of State may so determine: s 3(8) (amended by the Local Government and Public Involvement in Health Act 2007 ss 202(1)(c), (d), 241, Sch 18 Pt 15). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 As to the meaning of 'local authority' see PARA 23. As to the application of the Local Government and Housing Act 1989 s 3 with modifications see PARA 120 note 4.

6 Local Government and Housing Act 1989 s 3(2)(a). An application must not be made by virtue of s 3(2)(a) in respect of a post under a local authority except where: (1) the authority has specified or is proposing to specify the post in the list maintained by the authority under s 2(2) (see PARA 122); and (2) in the case of a post falling within s 2(2)(a) or s 2(2)(b), the authority has certified whether or not, in its opinion, the duties of the post fall within s 2(3) (see PARA 122): s 3(3). It is the duty of a local authority to give a certificate for the purposes of head (2) above in relation to any post, if it is requested to do so by the holder of that post: s 3(3).

If, on an application made by virtue of s 3(2)(a) in respect of any post under a local authority, the person to whom the application is made is satisfied that the duties of the post do not fall within s 2(3), that person must direct that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post, and that, accordingly, the post is not to be specified in the list maintained by that authority under s 2(2) or, as the case may be, the post is to be removed from that list: s 3(4).

7 I.e. by virtue of the Local Government and Housing Act 1989 s 3(2)(a): see the text to notes 5-6.

8 Local Government and Housing Act 1989 s 3(7). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

9 Local Government and Housing Act 1989 s 3(2)(b). The list referred to in the text is the list maintained by the local authority under s 2(2): see PARA 122. A person appointed under s 3(1) (see the text and notes 1-4) must not give a direction under s 3(2)(b) in respect of any post under a local authority except where he is

satisfied that the post is a post the duties of which fall within s 2(3) (see PARA 122), and is neither included in any list maintained by the authority in accordance with s 2(2) or the Local Government Act 1972 s 100G(2) (see PARA 667) nor of a description specified in any regulations under the Local Government and Housing Act 1989 s 2(2): s 3(5).

10 Local Government and Housing Act 1989 s 3(6)(a).

11 Local Government and Housing Act 1989 s 3(6)(b).

12 Ie by virtue of the Local Government and Housing Act 1989 s 3(2)(b): see the text to note 9.

13 Local Government and Housing Act 1989 s 3(6)(c).

UPDATE

124 Exemption from political restriction in Wales

NOTE 6--Local Government and Housing Act 1989 s 3(3) amended: Local Democracy, Economic Development and Construction Act 2009 s 30(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(1) QUALIFICATION AND DISQUALIFICATION/125. Validity of acts of unqualified persons.

125. Validity of acts of unqualified persons.

The acts and proceedings of any person elected¹ to an office under the Local Government Act 1972 or elected or appointed to an office under Part IV of the Local Government Act 1985² or elected as elected mayor or executive leader³ and acting in that office are, notwithstanding his disqualification or want of qualification⁴, as valid and effectual as if he had been qualified⁵.

1 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

2 Ie the Local Government Act 1985 Pt IV (ss 23-42).

3 As to the election of elected mayors see PARA 322; and executive leaders see PARA 158.

4 See PARA 117 et seq.

5 Local Government Act 1972 s 82(1) (amended by the Local Government Act 1985 s 84, Sch 14 Pt I para 4; the Education Reform Act 1988 s 237(2), Sch 13 Pt I; renumbered by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(2); and amended by SI 2001/2237; and SI 2002/808). In relation to the Broads Authority, this provision has effect as if the references to the Local Government Act 1972 included a reference to the Norfolk and Suffolk Broads Act 1988: Local Government Act 1972 s 82(2) (added by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 10(2)). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/126. Electoral areas.

(2) ELECTIONS

(i) Ordinary Elections

A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972

126. Electoral areas.

Every non-metropolitan county¹ is divided into divisions each returning one councillor². Every metropolitan district³ is divided into wards, each returning such number of councillors as may be provided⁴. Likewise, every non-metropolitan district⁵ is divided into wards, each returning such number of councillors as may be provided⁶.

In Wales, every principal area⁷ is divided into electoral divisions, each returning such number of councillors as may be provided by order⁸.

There must be a separate election for each electoral division or ward⁹.

A local authority¹⁰ in England may, by resolution¹¹, change the name of any of the authority's electoral areas¹².

1 As to the meaning of 'non-metropolitan county' see PARA 24 note 5.

2 Local Government Act 1972 s 6(2)(a) (amended by the Local Government Act 1985 s 102, Sch 16 para 2; the Local Government Act 2000 s 89(4); and the Local Government and Public Involvement in Health Act 2007 s 22, Sch 1 para 11(1), (2)). This is subject to the Local Government Act 1972 s 18, Sch 3 para 3, the Local Government Act 1992 ss 14(8), s 17(7), and the Local Government and Public Involvement in Health Act 2007 s 12(4) (see PARA 61); see the Local Government Act 1972 s 6(2)(a) (as so amended).

3 As to the meaning of 'metropolitan district' see PARA 24 note 5.

4 Local Government Act 1972 s 6(2)(b) (substituted by the Local Government and Public Involvement in Health Act 2007 s 58(1), (2)). The number of councillors may be provided: (1) under or by virtue of the provisions of the Local Government Act 1972 s 7 (see PARA 128 et seq); (2) by an order under the Local Government Act 1992 Pt 2 (ss 12-27); (3) by an order under the Local Government and Rating Act 1997 s 14 (repealed); or (4) by an order under Local Government and Public Involvement in Health Act 2007 Pt 1 (ss 1-30); Local Government Act 1972 s 6(3) (substituted by the Local Government and Public Involvement in Health Act 2007 s 58(1), (3)).

5 As to the meaning of 'non-metropolitan district' see PARA 24 note 5.

6 Local Government Act 1972 s 6(2)(c) (amended by the Local Government and Rating Act 1997 s 33(1), Sch 3 para 5(a)). As to the provision of numbers of councillors see the Local Government Act 1972 s 6(3); and note 4.

7 As to the meaning of 'principal area' see PARA 23.

8 Local Government Act 1972 s 25(2) (substituted by the Local Government (Wales) Act 1994 s 4(1)). The reference in the text to orders is to orders made under the Local Government Act 1972 Sch 5 para 2 or under or by virtue of the provisions of Pt IV (ss 53-78).

9 Local Government Act 1972 ss 6(2), 25(3) (s 25(3) added by the Local Government (Wales) Act 1994 s 4(1)). No misnomer or inaccurate description of any person or place named in any voting paper or notice relating to an election under the Local Government Act 1972 Pts 1, 2 (ss 1-38) affects its full operation with respect to that person or place, in any case where the description of the person or place is such as to be commonly understood: s 242. As to structural, electoral and boundary changes see PARA 54 et seq.

10 For these purposes 'local authority' means a county council in England, a district council in England or a London borough council: Local Government and Public Involvement in Health Act 2007 s 59(10).

11 The local authority must not pass the resolution unless it has taken reasonable steps to consult such persons as it considers appropriate on the proposed name: Local Government and Public Involvement in Health Act 2007 s 59(2), (3). The resolution must be passed at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object, and by a majority of at least two thirds of the members (including, in a case where the council is operating a mayor and cabinet executive, the elected mayor of the

council) voting on it: s 59(2), (4), (9). If the name of the electoral area is protected, the resolution may not be passed unless the Electoral Commission has first agreed to the proposed change: s 59(2), (5). For the purposes of this section the name of an electoral area is 'protected' if the name was given to the electoral area by or in pursuance of an order under the Local Government Act 1992 s 17 (see PARA 56 note 3) or the Local Government and Rating Act 1997 s 14 (repealed), and that order was made during the period of five years ending with the day on which a resolution to change the name is to be passed: Local Government and Public Involvement in Health Act 2007 s 59(8). As to the Electoral Commission see PARA 138; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

12 Local Government and Public Involvement in Health Act 2007 s 59(1). As soon as practicable after a resolution is passed, the local authority must give notice of the change of name to all of the following: (1) the Electoral Commission; (2) the Boundary Commission for England; (3) the Office for National Statistics; (4) the Director General of the Ordnance Survey; (5) if the local authority is a county council, the district council (if any) within whose area the electoral area lies; (6) if the local authority is a district council, the county council (if any) within whose area the electoral area lies: s 59(6). The change of name does not take effect until the Electoral Commission has been given notice of the change; s 59(7). As to the Boundary Commission for England see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 67. As to the Office for National Statistics see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605. As to the Director General of the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110.

UPDATE

126 Electoral areas

TEXT AND NOTES 1-6--Local Government Act 1972 s 6(2)(a), 6(3) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 4 para 2.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/127. Electors.

127. Electors.

Councillors for a principal area¹ are elected by the local government electors² for that area in accordance with the Local Government Act 1972 and Part I of the Representation of the People Act 1983³.

1 As to the meaning of 'principal area' see PARA 23. As to the qualification required to be a councillors see PARA 117.

2 'Local government elector' means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 270(1). As to the registration of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 127 et seq; and as to local government electors generally see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 112 et seq.

3 See the Local Government Act 1972 ss 6(1), 25(1) (both amended by the Representation of the People Act 1983 s 206, Sch 8 para 12). As to the Representation of the People Act 1983 Pt I (ss 1-66B) see **ELECTIONS AND REFERENDUMS**. As to the effect of inaccurate description see PARA 126 note 9.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/128. County councillors.

128. County councillors.

County councillors, elected in 1973 and in every fourth year thereafter, serve a four-year term, retiring on the fourth day after the election of their successors¹. The newly elected councillors come into office on the day on which their predecessors retire².

1 Local Government Act 1972 s 7(1). Where the day or the last day on which anything is required or permitted to be done by virtue of any provision of the Local Government Act 1972 or of an instrument under it (except a provision in Pt IX (ss 179-213) or Pt X (ss 216-221) or a provision of rules under Sch 12 para 18 or 34 (see PARA 638)) or of the Local Government Act 1985 ss 31, 32 (see PARA 118) is a Sunday, a day of the Christmas break, a day of the Easter break, a day of a bank holiday break or a day appointed for public thanksgiving or mourning, the requirement or permission is deemed to relate to the first day thereafter which is not one of those days: Local Government Act 1972 s 243(1), (2) (s 243(2) amended by the Representation of the People Act 1983 s 206, Sch 9 Pt II; the Local Government Act 1985 s 84, Sch 14 para 33; and the Education Reform Act 1988 s 237, Sch 13 Pt I). 'Christmas break' means the period beginning with the last weekday before Christmas Day and ending with the first weekday after Christmas Day which is not a bank holiday: Local Government Act 1972 s 270(1). 'Easter break' means the period beginning with the Thursday before and ending with the Tuesday after Easter Day: s 270(1). 'Bank holiday break' means any bank holiday not included in the Christmas break or the Easter break and the period beginning with the last weekday before that bank holiday and ending with the next weekday which is not a bank holiday: s 270(1). As to bank holidays see the Banking and Financial Dealings Act 1971 s 1, Sch 1; and **TIME** vol 97 (2010) PARA 321. As to Whit Tuesday, in the days when Whit Monday was a bank holiday, see *Re Counter's Petition, Buckingham v Counter* [1938] 2 KB 90, [1938] 1 All ER 186, CA.

In computing any period of time for the purposes of any rules mentioned in the Local Government Act 1972 s 243(2) (voting and polls: see PARA 128) or for the purposes of s 89(1) (election to fill a vacancy: see PARA 140), any day specified in s 243(1) is disregarded; but where between the giving of a notice of the poll and the completion of the poll a day is declared to be a bank holiday or a day of public thanksgiving or mourning, the provisions of s 243(1), so far as they relate to any such rules, do not operate to invalidate any act which would have been valid apart from those provisions: s 243(4) (amended by the Representation of the People Act 1983 Sch 9 Pt II; and the Statute Law (Repeals) Act 1995). So far as the Local Government Act 1972 s 243(4) relates to any such rules, it has effect subject to the provisions of those rules: s 243(5). Where the day of a poll consequent on a parish or community meeting is postponed under s 243(4), the day to which it is postponed is to be treated as the day of the poll: s 243(3) (amended by the Representation of the People Act 1985 ss 19, 28, Sch 5). See also **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 204 et seq. As to the computation of time generally see **TIME** vol 97 (2010) PARA 329 et seq. As to the effect of inaccurate description see PARA 126 note 9.

2 Local Government Act 1972 s 7(1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/129. Metropolitan district councils.

129. Metropolitan district councils.

Metropolitan district councillors, elected in every year other than a year of election of county councillors¹, serve a four-year term, and one third of the whole number of councillors in each ward, being those who have been councillors for the longest time without re-election, retire in every ordinary year of election of such councillors on the fourth day after the day of the election². The newly elected councillors come into office on the day on which their predecessors retire³.

1 See the Local Government Act 1972 s 7(2) (amended by the Local Government Act 1985 Sch 16 para 3). The Local Government Act 1972 s 7(2) specifies that the elections are to take place in every year other than 1977 and every fourth year thereafter: see s 7(2) (as so amended).

2 See the Local Government Act 1972 s 7(3). As to the effect of inaccurate description see PARA 126 note 9.

3 See the Local Government Act 1972 s 7(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/130. Non-metropolitan district councils.

130. Non-metropolitan district councils.

The ordinary elections of non-metropolitan district councillors must take place except where an order is in force providing for the election of district councillors by thirds¹, after 1979, every fourth year², and where such an order is in force, in the year when the order comes into force and every year thereafter other than a year of election of county councillors³.

In either case the term of office is four years⁴. Except where an order is in force providing for the election of councillors by thirds, the whole number of councillors must retire together in every ordinary year of election of such councillors on the fourth day after the ordinary day of election⁵. Where election by thirds is in force, one third of the non-metropolitan district councillors, being those who have served longest without re-election, retire in every ordinary year of election of such councillors on the fourth day after the ordinary day of election⁶.

1 As to elections by thirds see PARA 134.

2 Local Government Act 1972 s 7(8)(a).

3 Local Government Act 1972 s 7(8)(b). As to the effect of inaccurate description see PARA 126 note 9.

4 Local Government Act 1972 s 7(9)(a). The term of office for non-metropolitan district councillors elected in 1973 and 1976 was three years: see s 7(9)(a).

5 Local Government Act 1972 s 7(9)(b). The newly elected councillors come into office on the day on which their predecessors retire: s 7(9)(b).

6 Local Government Act 1972 s 7(9)(c). However, where the number of councillors in a non-metropolitan district ward is not divisible by three and where election by thirds operates, as nearly as may be one third of the councillors, being those who have served longest without re-election, are to retire: see s 7(9)(c). In every such year the newly elected councillors come into office on the day on which their predecessors retire: s 7(9)(c).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/131. Principal council in Wales.

131. Principal council in Wales.

In Wales, the ordinary elections of councillors of principal councils take place in every fourth year after 2004¹. The term of office of every such councillor is four years², and the persons who were councillors immediately before any ordinary election retire on the fourth day after the election³, and newly-elected councillors come into office on the day on which their predecessors retire⁴.

1 See the Local Government Act 1972 s 26(1) (s 26 substituted by the Local Government (Wales) Act 1994 s 4(2); s 26(1) amended by SI 2001/3540). As to the meaning of 'principal council' see PARA 23. As to the effect of inaccurate description see PARA 126 note 9.

- 2 Local Government Act 1972 s 26(2) (as substituted: see note 1).
- 3 Local Government Act 1972 s 26(3)(a) (as substituted: see note 1).
- 4 Local Government Act 1972 s 26(3)(b) (as substituted: see note 1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(i) Ordinary Elections/A. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1972/132. Parish councils.

132. Parish councils.

Parish councillors are elected by the local government electors¹ for the parish in accordance with the Local Government Act 1972 and Part I of the Representation of the People Act 1983 and relevant electoral arrangements². Where a parish is not divided into parish wards there must be one election of parish councillors for the whole parish³, but where a parish is divided into parish wards there must be a separate election of parish councillors for each ward⁴.

The ordinary elections of parish councillors take place, after 1979, every fourth year⁵. The term of office of parish councillors is four years⁶. They retire together on the fourth day after the ordinary day of election, and on the same day their newly elected successors come into office⁷. Casual vacancies must be filled by election or in certain circumstances by the parish council in accordance with the relevant rules⁸.

If the parish has the style of community, the councillors have the style of 'councillors of the community council'⁹. If the parish has the style of neighbourhood, the councillors have the style of 'councillors of the neighbourhood council'¹⁰. If the parish has the style of village, the councillors shall have the style of 'councillors of the village council'¹¹.

If parishes which have an alternative style¹² are grouped under a common parish council, whichever is appropriate of the styles noted above applies to the councillors of that council¹³.

1 As to the meaning of 'local government elector' see PARA 127 note 2.

2 Local Government Act 1972 s 16(2) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 12; and the Local Government and Public Involvement in Health Act 2007 s 101, Sch 5 paras 1, 6(1), (3)). In their application to the election of parish councillors, the Local Government Act 1972 and the Representation of the People Act 1983 Pt 1 (ss 1-66B; see **ELECTIONS AND REFERENDUMS**) are subject to the relevant electoral arrangements which apply to the election: Local Government Act 1972 s 16(2A) (s 16(2A), (2B) added by the Local Government and Public Involvement in Health Act 2007 s 101, Sch 5 paras 1, 6(1), (4)). For these purposes 'relevant electoral arrangements' means: (1) any arrangements about the election of councillors that are made in, or applicable by virtue of, provision made by virtue of the Local Government and Public Involvement in Health Act 2007 s 245(6)(b) (transitional, saving or transitory provision); and (2) any electoral arrangements applicable to the council by virtue of an order under the Local Government and Public Involvement in Health Act 2007 s 7 or 10, or 86 (see PARAS 61, 64, 69): Local Government Act 1972 s 16(2B) (as so added). As to the effect of inaccurate description see PARA 126 note 9.

3 Local Government Act 1972 s 16(4).

4 Local Government Act 1972 s 16(5).

5 See the Local Government Act 1972 s 16(3). Section 16(3) is subject to any provision included in an order by virtue of s 67 (see PARA 87) or Sch 3 paras 12, 13: see s 16(3).

6 See the Local Government Act 1972 s 16(3). See also note 5.

7 See the Local Government Act 1972 s 16(3). See also note 5.

8 Local Government Act 1972 s 89(6) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 13). The rules referred to in the text are those made under the Representation of the People Act 1983 s 36 (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 89(6) (as so amended).

9 Local Government Act 1972 s 16(6) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (7)).

10 Local Government Act 1972 s 16(7) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (7)).

11 Local Government Act 1972 s 16(8) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (7)).

12 As to alternative styles see PARA 31.

13 See the Local Government Act 1972 s 16(9) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (7)).

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133. Community councils in Wales.

Community councillors are elected by the local government electors¹ for the community in accordance with the Local Government Act 1972 and Part I of the Representation of the People Act 1983². Where a community is not divided into community wards there must be one election of community councillors for the whole community³, but where a community is divided into community wards there must be a separate election of community councillors for each ward⁴.

The ordinary elections of community councillors take place, after 2004, every fourth year⁵. The term of office of community councillors is four years⁶. They retire together on the fourth day after any ordinary election, and on the same day their newly-elected successors come into office⁷. Casual vacancies must be filled by election or in certain circumstances by the community council in accordance with the relevant rules⁸.

1 As to the meaning of 'local government elector' see PARA 127 note 2.

2 Local Government Act 1972 s 35(1) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 12). As to the Representation of the People Act 1983 Pt I (ss 1-66B) see **ELECTIONS AND REFERENDUMS**. As to the effect of inaccurate description see PARA 126 note 9.

3 Local Government Act 1972 s 35(3).

4 Local Government Act 1972 s 35(4).

5 See the Local Government Act 1972 s 35(2) (substituted by the Local Government (Wales) Act 1994 s 15; and amended by the Local Government Elections (Wales) Order 2001, SI 2001/3540).

6 Local Government Act 1972 s 35(2A) (s 35(2A), (2B) added by the Local Government (Wales) Act 1994 s 15).

7 See the Local Government Act 1972 s 35(2B) (as added: see note 16).

8 Local Government Act 1972 s 89(6) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 13). The rules referred to in the text are those made under the Representation of the People Act 1983 s 36 (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 89(6) (as so amended).

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B. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 2000

134. Election of councillors.

For the purposes of Part IV of the Local Government Act 2000¹, there are three options for the scheme for the ordinary elections of councillors of a principal council².

The first option is for a scheme under which:

- 204 (1) the term of office of councillors is four years³;
- 205 (2) the elections are held in a given year and every fourth year after it⁴;
- 206 (3) all the councillors are elected in each year in which the elections are held⁵;
- and
- 207 (4) the councillors retire together⁶.

The second option is for a scheme under which:

- 208 (a) the term of office of councillors is four years⁷;
- 209 (b) the elections are held in a given year and every second year after it⁸;
- 210 (c) one half (or as nearly as may be) of the councillors are elected in each year in which the elections are held⁹; and
- 211 (d) one half (or as nearly as may be) of the councillors retire in each year in which the elections are held¹⁰.

The third option is for a scheme under which:

- 212 (i) the term of office of councillors is four years¹¹;
- 213 (ii) the elections are held in a given year and every year after it other than every third year after it¹²;
- 214 (iii) one third (or as nearly as may be) of the councillors are elected in each year in which the elections are held¹³; and
- 215 (iv) one third (or as nearly as may be) of the councillors retire in each year in which the elections are held¹⁴.

The Secretary of State¹⁵ may by order make provision to secure that the scheme for the ordinary elections of councillors of any specified council¹⁶ in England is that under the first option above¹⁷ and of any specified council in Wales is that under such of the above options as is specified¹⁸.

The Secretary of State may by order make provision which changes the years in which the ordinary elections of councillors of any specified local authority¹⁹ are to be held but which does not change the scheme which prevails²⁰ for the ordinary elections of those councillors²¹.

If the Secretary of State makes an order under these provisions he may make a separate order containing incidental, consequential, transitional or supplemental provision as could have been included under the original order and regardless of whether such provisions were included in that order²².

1 le the Local Government Act 2000 Pt IV (ss 84-89).

2 See the Local Government Act 2000 s 85(1). For the purposes of Pt IV, 'principal council', in relation to England, means a county council, a district council, or a London borough council; and, in relation to Wales, means a county council or a county borough council: s 84.

3 Local Government Act 2000 s 85(2)(a).

4 Local Government Act 2000 s 85(2)(b).

5 Local Government Act 2000 s 85(2)(c).

6 Local Government Act 2000 s 85(2)(d).

7 Local Government Act 2000 s 85(3)(a).

8 Local Government Act 2000 s 85(3)(b).

9 Local Government Act 2000 s 85(3)(c).

10 Local Government Act 2000 s 85(3)(d).

11 Local Government Act 2000 s 85(4)(a).

12 Local Government Act 2000 s 85(4)(b).

13 Local Government Act 2000 s 85(4)(c).

14 Local Government Act 2000 s 85(4)(d).

15 As to the Secretary of State see PARA 96.

16 A council is specified if it is: (1) a principal council (or one of the principal councils) specified by name in the order; or (2) a principal council falling within any description of principal council specified in the order: Local Government Act 2000 s 86(2).

17 Local Government Act 2000 s 86(A1) (added by the Local Government and Public Involvement in Health Act 2007 s 54(3)(a)).

An order may make provision in relation to a council if the scheme specified in the order is different from the scheme which prevails (whether by virtue of an earlier order under the Local Government Act 2000 s 86 or otherwise) for the ordinary election of its councillors: s 86(3). An order may include provision specifying the years in which the ordinary elections are to be held: s 86(4).

18 Local Government Act 2000 s 86(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 54(3)(b)).

In a case where the specified scheme is that under the second or third option, an order may include provision for identifying which councillors are to retire in a particular year, and that provision may include: (1) provision for identifying the electoral divisions or wards affected; (2) provision for identifying the councillors affected within particular electoral divisions or wards: s 86(5). Provision under s 86(5) may include: (a) provision allowing the Secretary of State to direct councils to propose methods (complying with any guidance he may issue) for identifying electoral divisions, wards or councillors; (b) provision allowing him to give directions as to the methods to be adopted (whether those proposed or otherwise): s 86(6). An order may include provision designed to secure the transition from a prevailing scheme to the one specified in the order, and that provision may include: (i) provision to secure the retirement of existing councillors at times different from those applying under a prevailing scheme; (ii) in a case where the specified scheme is that under the second or third option, provision for the initial election of all the councillors, for the retirement of some of them before the end of the normal term of four years, and for identifying which of them are so to retire: s 86(7). See also note 17.

See the Local Authorities (Scheme for Elections of Specified Councils) (England) Order 2002, SI 2002/1962, art 3 (which continues in force in relation to England: see the Local Government and Public Involvement in Health Act 2007 s 54(6)).

19 A local authority is specified if it is: (1) a local authority (or one of the local authorities) specified by name in the order; or (2) a local authority falling within any class or description of local authority specified in the order: Local Government Act 2000 s 87(2). As to the meaning of 'local authority' see PARA 23.

20 le whether by virtue of an order under the Local Government Act 2000 s 86 or otherwise.

21 Local Government Act 2000 s 87(1). An order may include provision to secure the retirement of existing councillors at times different from those at which they would otherwise retire: s 87(3). See the Local Authorities (Scheme for Elections of Specified Councils) (England) Order 2002, SI 2002/1962, arts 4, 5 (which continues in force in relation to England: see the Local Government and Public Involvement in Health Act 2007 s 54(6)).

22 See the Local Government Act 2000 s 88. At the date at which this volume states the law no orders had been made under s 88.

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C. ELECTION OF COUNCILLORS UNDER THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

135. In general.

Metropolitan and non-metropolitan district councils in England may resolve to be subject to a scheme for whole-council elections¹. For these purposes, a council is:

- 216 (1) subject to a scheme for whole-council elections if all of its councillors are to be elected in each year in which it holds ordinary elections of councillors²;
- 217 (2) subject to a scheme for elections by halves if one-half (or as nearly as may be) of its councillors are to be elected in each year in which it holds ordinary elections of councillors³; or
- 218 (3) subject to a scheme for elections by thirds if one-third (or as nearly as may be) of its councillors are to be elected in each year in which it holds ordinary elections of councillors⁴.

1 See the Local Government and Public Involvement in Health Act 2007 Pt 2, Ch 1 (ss 31-54); and PARA 136 et seq.

2 Local Government and Public Involvement in Health Act 2007 s 31(a).

3 Local Government and Public Involvement in Health Act 2007 s 31(b).

4 Local Government and Public Involvement in Health Act 2007 s 31(c).

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136. Whole-council elections.

A metropolitan or non-metropolitan district council in England which is subject to a scheme for elections by halves¹ or by thirds² may resolve to be subject instead to the scheme for whole-council elections³. The council must comply with the following requirements for passing a resolution for whole-council elections⁴:

- 219 (1) it must not pass the resolution unless it has taken reasonable steps to consult such persons as it thinks appropriate on the proposed change⁵;
- 220 (2) the resolution must be passed:
- 11
17. (a) at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object⁶; and
18. (b) by a majority of at least two thirds of the members⁷ voting on it⁸;
- 12
- 221 (3) it must pass the resolution in a permitted resolution period⁹.

As soon as practicable after passing a resolution for whole-council elections the council must¹⁰:

- 222 (i) give the Electoral Commission notice that it has done so¹¹;
- 223 (ii) produce an explanatory document which sets out details of the new electoral scheme as it applies to the council¹²;
- 224 (iii) publicise in such manner as it deems appropriate¹³: (A) that it has become subject to the scheme for whole-council elections¹⁴; (B) when elections will first take place in accordance with the scheme¹⁵; (C) how the explanatory document is to be made available¹⁶; and (D) the address of the council's principal office¹⁷.

On passing a resolution for whole-council elections, a council becomes subject to the following electoral scheme¹⁸:

- 225 (aa) ordinary elections of the councillors of the council are to be held in the election year¹⁹ which follows the end of the resolution period²⁰, and every election year afterwards²¹;
- 226 (bb) all councillors are to be elected in each year in which ordinary elections are held²²;
- 227 (cc) on the fourth day after ordinary elections are held the councillors elected in those elections are to come into office²³, and the sitting councillors are to retire²⁴.

1 See PARA 134.

2 See PARA 134.

3 Local Government and Public Involvement in Health Act 2007 s 32(1). The scheme is under s 34 (see the text and notes 18-24). See also PARA 127 et seq.

4 Local Government and Public Involvement in Health Act 2007 s 33(1). A 'resolution for whole-council elections' is a resolution made under s 32 (see text and notes 1-3): s 32(2).

5 Local Government and Public Involvement in Health Act 2007 s 33(2).

6 Local Government and Public Involvement in Health Act 2007 s 33(3)(a).

7 Including in a case where the council is operating a mayor and cabinet executive, the elected mayor of the council: Local Government and Public Involvement in Health Act 2007 s 33(5).

8 Local Government and Public Involvement in Health Act 2007 s 33(3)(b).

9 Local Government and Public Involvement in Health Act 2007 s 33(4). 'Permitted resolution period' means, in relation to a metropolitan district council, (1) the period ending with 31 December 2009; or (2) the period in 2013, or in any fourth year afterwards, that starts with the day after that council's annual meeting and ends with 31 December: s 33(6)(a). 'Permitted resolution period' means, in relation to a non-metropolitan district council, (a) the period ending with 31 December 2010; or (b) the period in 2014, or in any fourth year afterwards, that starts with the day after that council's annual meeting and ends with 31 December: s 33(6). The Secretary of State may by order provide that a permitted resolution period is to end later than those specified days: s 33(7).

- 10 Local Government and Public Involvement in Health Act 2007 ss 35(1), 36(1).
- 11 Local Government and Public Involvement in Health Act 2007 s 36(2). As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.
- 12 Local Government and Public Involvement in Health Act 2007 s 35(2), (6). The council must make the explanatory document available for public inspection at the council's principal office at all reasonable times, and available to the public by such other means as the council thinks appropriate: s 35(3).
- 13 Local Government and Public Involvement in Health Act 2007 s 35(4), (5).
- 14 Local Government and Public Involvement in Health Act 2007 s 35(4)(a).
- 15 Local Government and Public Involvement in Health Act 2007 s 35(4)(b).
- 16 Local Government and Public Involvement in Health Act 2007 s 35(4)(c).
- 17 Local Government and Public Involvement in Health Act 2007 s 35(4)(d).
- 18 Local Government and Public Involvement in Health Act 2007 s 34(1).
- 19 'Election year' means, in relation to a metropolitan district council, 2010 and every fourth year afterwards; and, in relation to a non-metropolitan district council, 2011 and every fourth year afterwards: Local Government and Public Involvement in Health Act 2007 s 34(5).
- 20 Local Government and Public Involvement in Health Act 2007 s 34(2)(a). 'Resolution period' means the permitted resolution period in which the council passes a resolution for whole-council elections: s 34(5). If the permitted resolution period is extended by an order of the Secretary of State under s 33(7), the election year which follows the end of the resolution period is the election year in which the period extended by the Secretary of State ends: s 34(6).
- 21 Local Government and Public Involvement in Health Act 2007 s 34(2)(b).
- 22 Local Government and Public Involvement in Health Act 2007 s 34(3).
- 23 Local Government and Public Involvement in Health Act 2007 s 34(4)(a).
- 24 Local Government and Public Involvement in Health Act 2007 s 34(4)(b).

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137. Power of non-metropolitan district councils to revert to partial-council elections.

A non-metropolitan district council in England which was formerly subject to a scheme for elections by halves¹, but is for the time being subject to a scheme for whole-council elections², may resolve that it is to revert to being subject to a scheme for elections by halves³.

The council must comply with the following requirements in passing a resolution for elections by halves⁴:

- 228 (1) it must not pass the resolution unless it has taken reasonable steps to consult such persons as it thinks appropriate on the proposed change⁵;
- 229 (2) the resolution must be passed at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object⁶, and by a majority of at least two thirds of the members⁷ voting on it⁸;
- 230 (3) it must pass the resolution in a permitted resolution period⁹.

A district council in England which was formerly subject to a scheme for elections by thirds¹⁰, but is for the time being subject to a scheme for whole-council elections, may revert to being subject to a scheme for elections by thirds¹¹.

The council must comply with the following requirements in passing a resolution for elections by thirds¹²:

- 231 (a) it must not pass the resolution unless it has taken reasonable steps to consult such persons as it thinks appropriate on the proposed change¹³;
- 232 (b) the resolution must be passed at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object¹⁴, and by a majority of at least two thirds of the members¹⁵ voting on it¹⁶;
- 233 (c) it must pass the resolution in a permitted resolution period¹⁷.

The council must, as soon as practicable after passing a resolution to revert to an election by halves or thirds¹⁸:

- 234 (i) give the Electoral Commission notice that it has done so¹⁹;
- 235 (ii) produce an explanatory document which sets out details of the new electoral scheme (so far as the details are known at the time the document is prepared)²⁰;
- 236 (iii) publicise in such manner as it deems appropriate²¹: (A) that it has resolved to become subject to the new electoral scheme²²; (B) that the Electoral Commission is to make provision by order about the operation of, and transition to, the new electoral scheme²³; (C) how the explanatory document is to be made available²⁴; and (D) the address of the council's principal office²⁵.

1 le, it was subject to a scheme of election by halves at any time in the period beginning with 1 April 1974 or, if later, the date on which the council was created: Local Government and Public Involvement in Health Act 2007 s 37(2). As to what constitutes elections by halves see PARA 134.

2 As to what constitutes a whole-council election see PARA 135.

3 Local Government and Public Involvement in Health Act 2007 s 37(1). Such a resolution is referred to as a 'resolution for elections by halves': s 37(3).

4 Local Government and Public Involvement in Health Act 2007 s 38(1).

5 Local Government and Public Involvement in Health Act 2007 s 38(2).

6 Local Government and Public Involvement in Health Act 2007 s 38(3)(a)

7 The reference to the members of the council includes, in a case where the council is operating a mayor and cabinet executive, the elected mayor of the council: Local Government and Public Involvement in Health Act 2007 s 38(5).

8 Local Government and Public Involvement in Health Act 2007 s 38(3)(b).

9 Local Government and Public Involvement in Health Act 2007 s 38(4). In this section 'permitted resolution period' means the period in 2008, or in any fourth year afterwards, that starts with the day after that council's annual meeting and ends with 31 December: s 38(6). The Secretary of State may by order provide that a permitted resolution period is to end later than the aforementioned days: s 38(7). At the date at which this volume states the law no such order had been made.

10 le it was subject to a scheme of election by thirds at any time in the period beginning with 1 April 1974, or if later, the date on which the council was created: Local Government and Public Involvement in Health Act 2007 s 39(2). As to what constitutes elections by thirds see PARA 134.

11 Local Government and Public Involvement in Health Act 2007 s 39(1). Such a resolution is referred to as a 'resolution for elections by thirds': s 39(3).

- 12 Local Government and Public Involvement in Health Act 2007 s 40(1).
- 13 Local Government and Public Involvement in Health Act 2007 s 40(2).
- 14 Local Government and Public Involvement in Health Act 2007 s 40(3)(a).
- 15 The reference to the members of the council includes, in a case where the council is operating a mayor and cabinet executive, the elected mayor of the council: Local Government and Public Involvement in Health Act 2007 s 40(5).
- 16 Local Government and Public Involvement in Health Act 2007 s 40(3)(b).
- 17 Local Government and Public Involvement in Health Act 2007 s 40(4). 'Permitted resolution period' means in relation to a metropolitan district council, the period in 2011, or in any fourth year afterwards, that starts with the day after that council's annual meeting and ends with 31 December (s 40(6)(a)); in relation to a non-metropolitan district council, the period in 2008, or in any fourth year afterwards, that starts with the day after that council's annual meeting and ends with 31 December (s 40(6)(b)). The Secretary of State may by order provide that a permitted resolution period is to end later than the aforementioned days: s 40(7).
- 18 Local Government and Public Involvement in Health Act 2007 ss 41(1), 42(1).
- 19 Local Government and Public Involvement in Health Act 2007 s 42(2). As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.
- 20 Local Government and Public Involvement in Health Act 2007 s 41(2), (6). The council must make the explanatory document available for public inspection at the council's principal office at all reasonable times, and available to the public by such other means as the council thinks appropriate: s 41(3).
- 21 Local Government and Public Involvement in Health Act 2007 s 41(5).
- 22 Local Government and Public Involvement in Health Act 2007 s 41(4)(a).
- 23 Local Government and Public Involvement in Health Act 2007 s 41(4)(b).
- 24 Local Government and Public Involvement in Health Act 2007 s 41(4)(c).
- 25 Local Government and Public Involvement in Health Act 2007 s 41(4)(d).

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138. The Electoral Commission.

Where the Electoral Commission¹ has received notice² that a council has passed a resolution for election by halves or thirds³ it must⁴:

- 237 (1) in the case of a resolution for elections by halves, make an order for elections by halves in relation to the council⁵; and
- 238 (2) in the case of a resolution for elections by thirds, make an order for elections by thirds in relation to the council⁶.

The Commission must not, however, make the order before it has decided whether or not to give the Boundary Committee⁷ a direction to conduct an electoral review⁸ or, if it gives such a direction, before the Boundary Committee has concluded the review⁹.

An order for elections by halves in relation to a council must secure that the ordinary elections of councillors are held in the first relevant year¹⁰ after the year in which the Commission makes the order, and each subsequent year for elections by halves¹¹.

Such an order must also make provision for the election and retirement of councillors¹². In the case of the ordinary elections held in the first relevant year¹³ all of the councillors are to be elected and on the fourth day after the elections are held the councillors elected in those elections are to come into office and all of the sitting councillors are to retire¹⁴.

In the case of ordinary elections held subsequently, one half (or as nearly as may be) of the councillors are to be elected, and on the fourth day after the elections are held the councillors elected in those elections are to come into office, and the specified sitting councillors¹⁵ are to retire¹⁶.

The order must include provision for identifying which councillors are to retire in each year in which ordinary elections are to be held (other than the first), including provision for identifying the wards affected, and the councillors affected within particular wards¹⁷.

An order for elections by thirds in relation to a council must secure that the ordinary elections of councillors of the council are held in the first relevant year¹⁸ after the year in which the Commission makes the order and each subsequent year, unless it is a fallow year¹⁹.

Such an order must also make provision for the election and retirement of councillors²⁰. In the case of ordinary elections held in the first relevant year after the year in which the Commission makes the order, all of the councillors are to be elected and on the fourth day after the elections are held the councillors elected in those elections are to come into office, and all of the sitting councillors are to retire²¹. In the case of ordinary elections held subsequently one third (or as nearly as may be) of the councillors are to be elected; and on the fourth day after the elections are held the councillors elected in those elections are to come into office, and the specified sitting councillors²² are to retire²³.

The order must include provision for identifying which councillors are to retire in each year in which ordinary elections are to be held (other than the first), including provision for identifying the wards affected and the councillors affected within particular wards²⁴.

As soon as practicable after the Electoral Commission has made an order for elections by halves or for elections by thirds in relation to it, a council must produce an explanatory document²⁵ which it must then make:

- 239 (a) available for public inspection at the council's principal office at all reasonable times²⁶; and
- 240 (b) available to the public by such other means as the council thinks appropriate²⁷.

The council must publicise that it has become subject to the new electoral scheme, how the explanatory document is available, and the address of its principal office²⁸.

1 As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31.

2 ie notice under the Local Government and Public Involvement in Health Act 2007 s 42: see PARA 137.

3 As to the meaning of 'resolution for elections by half' see PARA 137 note 3; and as to the meaning of 'resolution for elections by third' see PARA 137 note 11.

4 Local Government and Public Involvement in Health Act 2007 s 44(1). In addition to the specific provisions relating to orders for election by halves and thirds, the order may also include provision about the transition to the council's new electoral scheme and in particular for the retirement of some councillors after their initial election at times different from those applying and for identifying which of them are so to retire: s 49. The

Electoral Commission may also make incidental, consequential, transitional or supplemental provision in connection with provision made by order: s 50.

5 Local Government and Public Involvement in Health Act 2007 s 44(1)(a). See also note 4.

6 Local Government and Public Involvement in Health Act 2007 s 44(1)(b). See also note 4.

7 As to the Boundary Committee for England see PARA 58.

8 Local Government and Public Involvement in Health Act 2007 s 44(2)(a). As soon as practicable after receiving notice under s 42 (see PARA 137) that a council has passed a resolution for elections by halves or by thirds the Electoral Commission must consider whether to exercise its power under the Local Government Act 1992 s 13(3) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 92) to direct the Boundary Committee to conduct a review of the district in question (or any part of it): Local Government and Public Involvement in Health Act 2007 s 43(1), (2). As soon as practicable after taking such a decision the Commission must give the council notice of that decision: s 43(3). If the Boundary Committee, in response to such a request, makes recommendations for electoral changes, nothing in Pt 2, Ch 1 (ss 31-54) (see PARA 134 et seq) requires the Commission to make any provision in relation to matters dealt with, or to be dealt with, by an order under the Local Government Act 1992 s 17 (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 92; **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 553) giving effect to those recommendations: Local Government and Public Involvement in Health Act 2007 s 51.

9 Local Government and Public Involvement in Health Act 2007 s 44(2)(b).

10 'Relevant year' means 2011 and every fourth year afterwards: Local Government and Public Involvement in Health Act 2007 s 45(3).

11 Local Government and Public Involvement in Health Act 2007 s 45(1), (2). 'Year for elections by halves' means 2012 and every second year afterwards: s 45(3).

12 Local Government and Public Involvement in Health Act 2007 s 46(1).

13 Ie the first relevant year after the year in which the Electoral Commission makes the order in accordance with s 45(2)(a).

14 Local Government and Public Involvement in Health Act 2007 s 46(2).

15 'Specified sitting councillors', in relation to ordinary elections, means the sitting councillors who are to retire in the year of those elections by virtue of the order: Local Government and Public Involvement in Health Act 2007 s 46(5).

16 Local Government and Public Involvement in Health Act 2007 s 46(3).

17 Local Government and Public Involvement in Health Act 2007 s 46(4).

18 'Relevant year' means (1) in relation to a metropolitan district council, 2014 and every fourth year afterwards; and (2) in relation to a non-metropolitan district council, 2011 and every fourth year afterwards: Local Government and Public Involvement in Health Act 2007 s 47(3).

19 Local Government and Public Involvement in Health Act 2007 s 47(1), (2). 'Fallow year' means 2013 and every fourth year afterwards: s 47(3).

20 Local Government and Public Involvement in Health Act 2007 s 48(1).

21 Local Government and Public Involvement in Health Act 2007 s 48(2).

22 'Specified sitting councillors', in relation to ordinary elections, means the sitting councillors who are to retire in the year of those elections by virtue of the order: Local Government and Public Involvement in Health Act 2007 s 48(5).

23 Local Government and Public Involvement in Health Act 2007 s 48(3).

24 Local Government and Public Involvement in Health Act 2007 s 48(4).

25 Local Government and Public Involvement in Health Act 2007 s 52(1), (2). An explanatory document is a document which sets out details of the new electoral scheme: s 52(6).

26 Local Government and Public Involvement in Health Act 2007 s 52(3)(a).

27 Local Government and Public Involvement in Health Act 2007 s 52(3)(b).

28 Local Government and Public Involvement in Health Act 2007 s 52(4). It is for the council to decide how these matters are to be publicised: s 52(5).

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139. Parish councillors.

Wherever a council passes a resolution changing an electoral scheme¹, it may by order² make provision that changes the years in which the ordinary elections of parish councillors for any parish situated in the council's area are to be held³. The power may only be exercised so as to secure that those elections are to be held in years in which ordinary elections of district councillors for a ward in which any part of the parish is situated are to be held⁴.

1 See a resolution under the Local Government and Public Involvement in Health Act 2007 Pt 2, Ch 1 (ss 31-54): see PARA 134 et seq.

2 The order may include transitional provision (1) for the retirement of existing parish councillors at times different from those otherwise applying; (2) for the retirement of some parish councillors after their initial election after the order comes into force at times different from those otherwise applying: Local Government and Public Involvement in Health Act 2007 s 53(4).

3 Local Government and Public Involvement in Health Act 2007 s 53(1), (2).

4 Local Government and Public Involvement in Health Act 2007 s 53(3). As to parish councils see PARA 27 et seq.

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(ii) Casual Vacancies

140. Casual vacancies of councillors.

On a casual vacancy¹ occurring in the office of councillor for any principal area², an election³ to fill the vacancy must be held within 35 days from the date of the declaration⁴ in a case in which the High Court⁵ or the council has declared the office to be vacant⁶, and in any other case within 35 days after notice in writing of the vacancy has been given to the proper officer⁷ of the authority by two local government electors⁸ for the area⁹. The returning officer must fix the date of election¹⁰.

Where a casual vacancy in any such office occurs within six months before the day on which the councillor whose office is vacant would regularly have retired, an election must not be held unless, on the occurrence of the vacancy or, in the case of a number of simultaneous vacancies, the occurrence of the vacancies, the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members¹¹. Where an election is not held, the vacancy must be filled at the next ordinary election¹².

Where more than one casual vacancy in the office of councillor of a district in which councillors are elected by thirds is filled at the same election, the person elected by the smallest number of votes is deemed to be elected in place of the councillor who would regularly have first retired, and the person elected by the next smallest number of votes is deemed to be elected in place of the councillor who would regularly have next retired and so with respect to the others¹³. Where there has not been a contested election, or if any doubt arises, the order of retirement is determined by lot¹⁴.

Where an election is contested, and an election to fill one or more casual vacancies in the office of councillor of any district in which councillors are elected by thirds is combined with an ordinary election of councillors, the following applies¹⁵: (1) the persons who are elected by the smallest numbers of votes, or if any relevant votes are equal, such persons as are determined by lot, are deemed elected to fill the casual vacancies¹⁶; (2) if the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the smallest number of votes or, if the relevant votes are equal, such person as is determined by lot, is to hold office for the shorter period, and so with respect to the others¹⁷.

Where the election is not contested, and an election to fill one or more casual vacancies in the office of councillor of any district in which councillors are elected by thirds is combined with an ordinary election of councillors, the following applies¹⁸: (a) those declared elected, if fewer than the vacancies to be filled, are deemed elected to fill the vacancies in which they will hold office for the longest periods¹⁹; (b) where there are two or more persons declared elected and they are to fill vacancies in which they will hold office for different periods, any retiring councillors elected are to be deemed elected to fill the vacancies in which they will hold office for the longest period, and the question which of the persons declared elected who are not retiring councillors is to be deemed elected to fill any of the vacancies not filled by retiring councillors is determined by lot²⁰.

A casual vacancy among parish or community councillors is filled by election or by the parish or community council in accordance with rules made under the Representation of the People Act 1983²¹.

1 As to the declaration of a vacancy see PARA 298.

2 As to the meaning of 'principal area' see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. The Local Government Act 1972 s 89 applies to the Isles of Scilly: Isles of Scilly Order 1978, SI 1978/1844, art 6(2). As to the Council of the Isles of Scilly see PARA 36.

3 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

4 The period of time referred to in the text is computed in accordance with the Local Government Act 1972 s 243(4) (see PARA 128 note 1): s 89(1)(a) (amended by the Representation of the People Act 1985 s 19(6)(b)).

5 As to High Court proceedings for disqualification see PARA 301.

6 Local Government Act 1972 s 89(1)(a) (as amended: see note 4). Section 89(1) does not apply where a casual vacancy in the office of councillor of a predecessor council arises within six months of the reorganisation date: see the Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 13. As to the meaning of 'predecessor council' see PARA 316 note 4.

7 As to proper officers see PARA 431.

8 As to the meaning of 'local government elector' see PARA 127 note 2.

9 Local Government Act 1972 s 89(1)(b) (amended by the Representation of the People Act 1985 s 19).

10 See the Local Government Act 1972 s 89(2) (amended by the Local Government Act 1985 s 102, Sch 17).

11 Local Government Act 1972 s 89(3).

12 Local Government Act 1972 s 89(3).

13 Local Government Act 1972 s 89(4).

14 Local Government Act 1972 s 89(4). Where in the case of a contested election under s 89 any question is required to be determined by lot, the lot is drawn by the returning officer immediately after the question has arisen: s 89(7). Where in any other case any question is required to be determined by lot, the lot is drawn at the next meeting of the council after the question has arisen, and the drawing is conducted under the direction of the person presiding at the meeting: s 89(7). As to returning officers see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 359 et seq.

15 Local Government Act 1972 s 89(5)(a).

16 Local Government Act 1972 s 89(5)(a)(i).

17 Local Government Act 1972 s 89(5)(a)(ii).

18 Local Government Act 1972 s 89(5)(b).

19 Local Government Act 1972 s 89(5)(b)(i).

20 Local Government Act 1972 s 89(5)(b)(ii).

21 Local Government Act 1972 s 89(6) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 13). The rules referred to in the text are those made under the Representation of the People Act 1983 s 36 (see **ELECTIONS AND REFERENDUMS**): Local Government Act 1972 s 89(6) (as so amended).

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141. Casual vacancies of elected mayors.

On a casual vacancy¹ occurring in the office of an elected mayor² an election³ to fill the vacancy must be held within 35 days from the date of the declaration in a case in which the High Court⁴ or the local authority has declared the office to be vacant⁵, and in any other case within 35 days after notice in writing of the vacancy has been given to the proper officer⁶ of the authority by two local government electors⁷ for the area⁸. The returning officer must fix the date of election⁹.

A casual vacancy in the office of elected mayor must not be filled if the authority is to adopt different arrangements¹⁰ (whether or not they involve an elected mayor) or alternative arrangements¹¹. If the casual vacancy occurs within six months before the day on which the elected mayor would have retired, it must be filled at the next ordinary election¹².

Public notice of a casual vacancy must be given by the local authority in which the office exists¹³ in a case where the local authority declares the office to be vacant, immediately after the declaration¹⁴, and in any other case, as soon as practicable after the date on which the vacancy is treated as occurring¹⁵.

1 As to the declaration of a vacancy see PARA 298.

2 'Elected mayor' in relation to a local authority, means an individual elected as mayor of the authority by the local government electors for the authority's area in accordance with the provisions made by or under the Local Government Act 2000 Pt II (ss 10-48) (see PARA 303 et seq): Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 1(3).

3 As to the election of mayors see PARA 322.

- 4 As to High Court proceedings for disqualification see PARA 301.
- 5 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7(1)(a).
- 6 As to proper officers see PARA 431. As to the date and notice of casual vacancies see PARA 140.
- 7 As to local government electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 73, 112.
- 8 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7(1)(b).
- 9 See the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7(3). In computing a period for the purpose of reg 7(1)(a), the following should be disregarded: (1) a Saturday or Sunday; (2) Christmas Eve, Christmas Day, Maundy Thursday, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England; and (3) any day appointed as a day of public thanksgiving or mourning: reg 7(3)(a)-(c).
- 10 'Different arrangements' has the same meaning as in the Local Government Act 2000 s 30 (see PARA 311): Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 1(3).
- 11 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7(2)(a).
- 12 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7(2)(b). The day of election is determined by reference to the applicable provision of reg 3 or, as the case may be, reg 5: reg 7(2)(b).
- 13 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2). Public notice must be given in accordance with the Local Government Act 1972 s 232 (PARA 577): Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2).
- 14 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2)(a).
- 15 Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2)(b). As to the date on which the vacancy can be taken to have occurred see reg 8(1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(ii) Casual Vacancies/142. Term of office of persons filling casual vacancies.

142. Term of office of persons filling casual vacancies.

A person elected or appointed¹ in England or Wales to fill a casual vacancy², holds office until the date upon which the person in whose place he is elected or appointed would regularly have retired, and he must then retire³.

¹ ie elected or appointed under the provisions of the Local Government Act 1972 or the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq); or under the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 7 (see PARA 141).

² As to the declaration of a vacancy see PARA 298. As to the date and notice of casual vacancies see PARA 140.

³ See the Local Government Act 1972 s 90 (amended by the Local Government Act 1985 s 84, Sch 14 para 11; Education Reform Act 1988 s 237, Sch 13 Pt I; and the Statute Law (Repeals) Act 2004); and the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 9.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(2) ELECTIONS/(iii) Declaration of Acceptance of Office/143. Declaration of acceptance of office.

(iii) Declaration of Acceptance of Office

143. Declaration of acceptance of office.

The person elected¹ to the office of chairman, vice-chairman, councillor or elected mayor² of the council of a county, county borough, district or London borough³ must not, unless he has made a declaration of acceptance of office⁴ in the prescribed form⁵ and the declaration has within two months from the day of the election been delivered to the proper officer⁶ of the council, act in the office except for the purpose of taking such a declaration⁷. The declaration must be made before: (1) two members of the council to which the declarant is elected⁸; or (2) an elected mayor of the council to which the declarant is elected⁹; or (3) the proper officer of the council¹⁰; or (4) a justice of the peace or magistrate in the United Kingdom, the Channel Isles or the Isle of Man¹¹; or (5) a commissioner appointed to administer oaths in the Supreme Court¹². If the declaration is not made and delivered to the proper officer within the appointed time, the office of the person elected becomes vacant upon the expiration of that time¹³.

A person elected to the office of chairman of a parish or community council or parish or community councillor must make a declaration of acceptance of office in the prescribed form¹⁴ in the presence of a member of the council or of the proper officer of the council and deliver it to the council, and if he fails to do so his office will thereupon become vacant¹⁵. The declaration must be made: (a) in the case of the chairman, at the meeting at which he is elected¹⁶; (b) in the case of a councillor, before or at the first meeting of the parish or community council after his election¹⁷; or (c) in either case if the council at that meeting so permits, before or at a later meeting fixed by the council¹⁸. Any person before whom a declaration is authorised to be made under these provisions may take the declaration¹⁹.

1 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

2 As to the election of mayors see PARA 322.

3 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

4 The Local Government and Housing Act 1989 provides that the form of declaration of acceptance of office under the Local Government Act 1972 s 83 may include an undertaking by the declarant to be guided by the National Code of Local Government Conduct in the performance of his functions: see the Local Government and Housing Act 1989 s 31(7) (prospectively repealed by the Local Government Act 2000 s 107, Sch 5 para 26, Sch 6). As to standards of conduct see PARA 232 et seq. The Local Government Act 2000 provides that the form of declaration of acceptance of office which may be prescribed by an order under the Local Government Act 1972 s 83 may include an undertaking by the declarant that in performing his functions he will observe the authority's code of conduct for the time being under the Local Government Act 2000 s 51 (see PARA 235): Local Government Act 2000 s 52(2). Section 52(2) has been amended by the Local Government and Public Involvement in Health Act 2007 ss 183(4), 241, Sch 18, Pt 15 so that the form of declaration of acceptance of office which may be prescribed by an order under the Local Government Act 1972 s 83 may include an undertaking by the declarant that he will observe the authority's code of conduct for the time being under the Local Government Act 2000 s 51 (see PARA 235). This amendment was brought into force in relation to Wales on 31 January 2008 (see Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 2(1)(u)(iii)), but at the date at which this volume states the law no such day had been appointed under the Local Government and Public Involvement in Health Act 2007 s 245(5) in relation to England.

5 le a form prescribed by an order made by the Secretary of State or the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the orders that have been made see the Local Elections (Declaration of Acceptance of Office) Order 2001, SI 2001/3941; the Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004, SI 2004/1508.

6 As to proper officers see PARA 431.

7 Local Government Act 1972 s 83(1) (amended by the Local Government Act 1985 s 102(2), Sch 17; the Local Government and Housing Act 1989 s 30(2); the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 23; the Local Government Act 2000 s 46, Sch 3 para 9(1), (2); and SI 1977/1710). The Local Government Act 1972 s 83 (as so amended) applies to the Isles of Scilly: Isles of Scilly Order 1978, SI 1978/1844, art 6(2). As to the Council of the Isles of Scilly see PARA 36. The Local Government Act 1972 s 83 (as so amended) constitutes the only power a council has to require the making of a declaration as a pre-condition of taking office: *Re French's Application* [1985] NI 310, [1985] 7 NIJB 48.

8 Local Government Act 1972 s 83(3)(a).

9 Local Government Act 1972 s 83(3)(aa) (added by the Local Government Act 2000 s 46, Sch 3 para 9(1), (3)).

10 Local Government Act 1972 s 83(3)(b).

11 Local Government Act 1972 s 83(3)(c). See generally **MAGISTRATES**. As to the meaning of 'United Kingdom' see PARA 116 note 18.

12 Local Government Act 1972 s 83(3)(d) (amended, as from a day to be appointed, by the Constitutional Reform Act 2005 s 59(5), Sch 11 para 4(1), (3) to refer to the Senior Courts instead of the Supreme Court. At the date at which this volume states the law no such day had been appointed).

13 Local Government Act 1972 s 83(2). As to the date and notice of casual vacancies see PARA 140.

14 le a form prescribed by an order made by the Secretary of State. As to the orders that have been made see the Local Elections (Parishes and Communities) (Declaration of Acceptance of Office) Order 1990, SI 1990/2477; the Local Elections (Declaration of Acceptance of Office) (Amendment) (Wales) Order 2001, SI 2001/2963; the Local Elections (Declaration of Acceptance of Office) Order 2001, SI 2001/3941; and the Local Elections (Declaration of Acceptance of Office) (Wales) Order, 2004, SI 2004/1508.

15 Local Government Act 1972 s 83(4) (amended by the Local Government and Housing Act 1989 s 30(2)).

16 Local Government Act 1972 s 83(4)(a).

17 Local Government Act 1972 s 83(4)(b).

18 Local Government Act 1972 s 83(4)(c).

19 Local Government Act 1972 s 83(5).

UPDATE

143 Declaration of acceptance of office

NOTE 12--Appointed day is 1 October 2009: SI 2009/1604.

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(3) CHAIRMAN, APPOINTMENTS AND CO-OPTIONS

(i) Chairman and Vice-chairman

144. Principal councils in England and Wales.

The chairman of a principal council¹ is elected annually by the council from among the councillors² and this election must be the first business transacted at the annual meeting of a principal council³. A member of the executive of a principal council may not be elected as the chairman⁴.

The chairman must, unless he resigns⁵ or becomes disqualified⁶, continue in office until his successor becomes entitled to act as chairman⁷. During his term of office he continues to be a member of the council notwithstanding the provisions relating to the retirement of councillors⁸.

The chairman of a district council has precedence in the district, but not so as prejudicially to affect Her Majesty's royal prerogative⁹.

A principal council must appoint a member of the council to be vice-chairman of the council¹⁰. A member of the executive of a principal council may not be appointed as the vice-chairman¹¹. The vice-chairman must, unless he resigns or becomes disqualified, hold office until immediately after the election of a chairman at the next general meeting of the council and during that time continues to be a member of the council notwithstanding the provisions relating to the retirement of councillors¹². Subject to any standing orders¹³ made by the council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman¹⁴.

The chairman and the vice-chairman must each make a declaration of acceptance of office before acting¹⁵. A principal council may pay the chairman and the vice-chairman for the purpose of enabling them to meet the expenses of their respective offices such allowance as the council thinks reasonable¹⁶.

The chairman of a county borough council is entitled to the style of 'mayor' or 'maer'¹⁷. The vice-chairman of a county borough council is entitled to the style of 'deputy mayor' or 'dirprwy faer'¹⁸.

In the case of a parish council which has resolved to have the status of a town, the chairman and vice chairman of the parish council are entitled to the style of town mayor and deputy town mayor¹⁹. Likewise, where a council of a community has resolved that the community shall have the status of a town, the chairman and vice-chairman are entitled to the style of town mayor or 'maer y dref' and deputy town mayor or 'dirprwy faer y dref' respectively²⁰.

The chairman has a first vote on all business before his authority which he is free to exercise with such regard to party political considerations as is allowed to any other councillor²¹. Where there is an equality of votes at a meeting of a local authority, the person presiding has a second or casting vote²². There is no obligation for that casting vote to be exercised so as to preserve the status quo or to keep a measure alive and allow further discussion, but it should be exercised with great circumspection, taking the broadest view of what the public interest requires but cases in which the law can intervene will be rare²³.

1 As to the meaning of 'principal council' see PARA 23. The provisions of the Local Government Act 1972 relating to chairmen apply to the Isles of Scilly as if the Council of the Isles of Scilly were a county council: see the Isles of Scilly Order 1978, SI 1978/1844, art 6(2); and PARA 36.

2 Local Government Act 1972 ss 3(1), 22(1). As to casual vacancies see PARA 140 et seq.

3 Local Government Act 1972 ss 4(1), 23(1). As to the annual meeting see PARA 628; and as to meetings of principal councils generally see PARA 629.

If present the outgoing chairman must preside for the election, or in his absence the outgoing vice-chairman if present must preside: see Sch 12 para 5(1), (2)(a); and PARA 630. See *Re Wolverhampton Borough Council's Aldermanic Election* [1962] 2 QB 460, [1961] 3 All ER 446, DC. In the event of an equality of votes the person presiding at the meeting must give a casting vote in addition to any other vote he may have: Local Government Act 1972 ss 4(3), 23(3). This duty, and the duty of adjudicating on and counting the votes and declaring the

result, may not be exercised by a candidate for the election in question: see *R v White* (1867) LR 2 QB 557. For a discussion of the principle that no man can be a judge in his own cause see **JUDICIAL REVIEW** vol 61 (2010) PARA 631. As to the meaning of 'candidate' see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 237. There being no statutory nomination procedure for the office of chairman, the person presiding may not know that votes are being cast for him until the election is under way or until the voting papers reach him. It seems that, if and when such a situation arises, the person presiding must either declare himself a candidate and vacate the chair (and thus the meeting also if he be the retiring chairman or vice-chairman who must preside, if present) or elect not to be a candidate, in which case he must fulfil the duties of chairman and thus 'returning officer' in respect of the other candidates.

A person presiding at the meeting who would have ceased to be a member of the council but for his continued membership as chairman or vice-chairman under the Local Government Act 1972 ss 3(3), 5(2), 22(3) or s 24(2), may not vote in the election of his successor other than by a casting vote in the case of an equality of votes: see ss 4(2), (3), 23(2), (3).

4 Local Government Act 1972 ss 3(1A), 22(1A). Nor may a local authority executive include the chairman or vice-chairman of the authority: see the Local Government Act 2000 s 11(7). As to meaning of 'principal council' see PARA 23.

5 As to resignation see PARA 297.

6 As to disqualification see PARA 119.

7 Local Government Act 1972 ss 3(2), 22(2).

8 Local Government Act 1972 ss 3(3), 22(3).

9 Local Government Act 1972 ss 3(4), 22(4) (s 22(4) substituted by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 2). The Local Government Act 1972 s 3(4) has effect in relation to a district council which is operating executive arrangements involving a mayor and cabinet executive as if it provided for the elected mayor of the council to have precedence in the district unless the executive arrangements provide for it not to apply: s 3(4A) (added by the Local Government Act 2000 s 46, Sch 3 para 2(1), (3); and amended by the Local Government and Public Involvement in Health Act 2007 s 74(1), 241, Sch 3 paras 1, 3, Sch 18 Pt 3). The Local Government Act 1972 s 22(4) (as so substituted) has effect in relation to a principal council in Wales which is operating executive arrangements involving a mayor and cabinet executive or a mayor and council manager executive as if it provided for the elected mayor of the council to have precedence in the district, unless the executive arrangements provide for it not to apply: s 22(4A) (added by the Local Government Act 2000 s 46, Sch 3 para 5(1), (3)). As to the royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 367-372. As to the meaning of 'executive arrangements' see PARA 303; and as to the meanings of 'mayor and cabinet executive' and 'mayor and council manager executive' see PARA 327 (definitions applied by s 270(1)). As to mayor and council manager executives see further PARA 333.

10 Local Government Act 1972 ss 5(1), 24(1).

11 Local Government Act 1972 ss 5(1A), 24(1A) (added by the Local Government Act 2000 s 46, Sch 3 paras 3, 6).

12 Local Government Act 1972 ss 5(2), 24(2).

13 As to standing orders see PARA 620.

14 Local Government Act 1972 ss 5(3), 24(3).

15 See the Local Government Act 1972 s 83(1); and PARA 143.

16 Local Government Act 1972 ss 3(5), 5(4), 22(5), 24(4). Earlier legislation referred to 'remuneration' rather than 'allowance', but judicial decisions under that legislation may still be relevant in deciding what is reasonable: see eg *Roberts v Hopwood* [1925] AC 578, 23 LGR 337, HL; *Re Audit (Local Authorities) Act 1927, Re Magrath* [1934] 2 KB 415, sub nom *Lee v McGrath* (1934) 32 LGR 380, CA; *R v Ramsgate Corpn* (1889) 23 QBD 66, DC. As to allowances generally see PARA 165 et seq. The receipt by a chairman or vice-chairman of an allowance or his right to receive, or the possibility of his receiving, such an allowance is not to be treated as a pecuniary interest: see PARA 285 et seq.

17 Local Government Act 1972 s 25A(1) (added by the Local Government (Wales) Act 1994 Sch 15 para 3). This does not apply where a county borough council is operating executive arrangements which involve a mayor and cabinet executive or a mayor and council manager executive: Local Government Act 1972 s 25A(3) (as so added). As to entitlement to the styles where there has been a change of status see PARA 25.

18 Local Government Act 1972 s 25A(2) (as added: see note 17).

19 See the Local Government Act 1972 s 245(6)(b); and PARA 28. This style ceases to have effect if the parish has an alternative style: see s 245(7A); and PARA 28.

20 See the Local Government Act 1972 s 245B(2)(b), (c); and PARA 41.

21 *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 671, CA.

22 Local Government Act 1972 Sch 12 para 39(2).

23 *R v Bradford City Metropolitan Council ex p Wilson (Note)* [1990] 2 QB 375, [1990] 2 WLR 255.

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145. Parish councils.

The chairman of a parish council must be elected annually by the council from among the elected councillors¹, and this election must be the first business transacted at the annual meeting of the parish council². In the case of an equality of votes in the election of a chairman, the person presiding at the meeting must give a casting vote in addition to any other vote he may have³. Unless he resigns or becomes disqualified, the chairman continues in office until his successor becomes entitled to act as chairman⁴. For the purpose of enabling him to meet the expenses of his office, a parish council may pay the chairman such allowance as the council thinks reasonable⁵.

The parish council may appoint a member of the council to be vice-chairman of the council⁶; and, unless he resigns or becomes disqualified, the vice-chairman holds office until immediately after the election of a chairman at the next annual meeting of the council⁷.

During their term of office the chairman and vice-chairman continue to be members of the council, notwithstanding the provisions of the Local Government Act 1972 relating to the retirement of parish councillors⁸. Subject to any standing orders⁹ made by the parish council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman¹⁰.

If the parish has the style of community, the chairman and vice-chairman (respectively) have the style 'chairman of the community council' and 'vice-chairman of the community council'¹¹. If the parish has the style of neighbourhood, the chairman and vice-chairman (respectively) have the style 'chairman of the neighbourhood council' and 'vice-chairman of the neighbourhood council'¹². If the parish has the style of village, the chairman and vice-chairman (respectively) have the style 'chairman of the village council' and 'vice-chairman of the village council'¹³.

If parishes which have an alternative style¹⁴ are grouped under a common parish council, the appropriate style noted above applies to the chairman and vice-chairman of that council¹⁵.

1 Local Government Act 1972 s 15(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 76(1), (20)(a)).

2 Local Government Act 1972 s 15(2). As to the annual meeting see PARA 628; and as to meetings of a parish council generally see PARA 34.

3 Local Government Act 1972 s 15(3). If, apart from s 15(8) (see the text and note 8), the person presiding at the meeting would have ceased to be a member of the parish council, he is not entitled to vote in the election except in accordance with s 15(3): see s 15(2).

- 4 Local Government Act 1972 s 15(4). As to disqualification see PARA 119. The chairman of the parish council presides at parish meetings: see PARA 34.
- 5 Local Government Act 1972 s 15(5).
- 6 Local Government Act 1972 s 15(6). In the case of the vice-chairman, there is no provision for payment of expenses. As from a day to be appointed s 15(6) is amended to allow only elected members of the council to hold the office of vice-chairman: s 15(6) (prospectively amended by the Local Government and Public Involvement in Health Act 2007 s 76(1), (2)(b)) On the date at which this volume states this amendment had been brought into force so far as it confers the power to make regulations under the Local Government Health Act 1972 s 16A (see PARA 164) (see the Local Government and Public Involvement in Health Act 2007 (Commencement No 5 and Transitional, Saving and Transitory Provision) Order 2008, SI 2008/917, art 4), but no day had been appointed for remaining purposes.
- 7 Local Government Act 1972 s 15(7).
- 8 Local Government Act 1972 s 15(8).
- 9 As to standing orders see PARA 620.
- 10 Local Government Act 1972 s 15(9).
- 11 Local Government Act 1972 s 15(11) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (6)).
- 12 Local Government Act 1972 s 15(12) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (6)).
- 13 Local Government Act 1972 s 15(13) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (6)).
- 14 As to alternative styles see PARA 31.
- 15 Local Government Act 1972 s 15(14) (added by the Local Government and Public Involvement in Health Act 2007 s 75(1), (6)).

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146. Parish meetings.

In a parish having a separate parish council¹, the chairman of the parish council² or, in his absence, the vice-chairman (if any) presides at the parish (or community, village or neighbourhood, as the case may be) meeting³.

In a parish not having a separate parish council, the chairman of a parish meeting is elected at its annual assembly⁴ and continues in office until his successor is elected⁵. The chairman presides at parish meetings, if present⁶. The chairman may resign his office on giving written notice to the parish meeting⁷. A casual vacancy in the office of chairman must be filled by the parish meeting, and a meeting must be convened for the purpose forthwith⁸. Any notice, order or other document required or authorised by any enactment or any instrument made under an enactment to be given to or served on a parish meeting or its chairman must be given or served by addressing it to the chairman of the parish meeting and by delivering it to him, or by leaving it at his last known address or by sending it to him at that address⁹.

In the absence of the chairman of the parish meeting or, as the case may be, the chairman or vice-chairman of the parish council, the parish meeting may appoint a person to take the chair and that person has, for the purposes of that meeting, the chairman's powers and authority¹⁰.

- 1 As to parish councils see PARA 27 et seq.
- 2 As to chairmen and vice-chairmen of parish councils see PARA 145.
- 3 See the Local Government Act 1972 s 99, Sch 12 para 17(1); and PARA 637. As to parish meetings see further PARA 34.
- 4 See the Local Government Act 1972 s 15(10). This is expressed to be subject to any provisions of a grouping order (see PARA 29): see s 15(10). As to the annual assembly see Sch 12 para 14; and PARA 635.
- 5 See the Local Government Act 1972 s 15(10).
- 6 See the Local Government Act 1972 Sch 12 para 17(2); and PARA 637.
- 7 See the Local Government Act 1972 s 84(1)(d); and PARA 297. The resignation takes effect on receipt of the notice by the meeting: see s 84(1); and PARA 297.
- 8 See the Local Government Act 1972 s 88(3); and PARA 148. As to convening meetings see PARA 635.
- 9 See the Local Government Act 1972 s 231(2); and PARA 578.
- 10 See the Local Government Act 1972 Sch 12 para 17(3); and PARA 637.

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147. Community councils.

The chairman of a community council must be elected annually by the council from among the councillors¹, and this election must be the first business transacted at the annual meeting of the community council². In the case of an equality of votes in the election of a chairman, the person presiding at the meeting must give a casting vote in addition to any other vote he may have³. Unless he resigns or becomes disqualified, the chairman continues in office until his successor becomes entitled to act as chairman⁴. For the purpose of enabling the chairman to meet the expenses of his office, a community council may pay him such allowance as the council thinks reasonable⁵.

The community council may appoint a member of the council to be vice-chairman of the council⁶; and, unless he resigns or becomes disqualified, the vice-chairman holds office until immediately after the election of a chairman at the next annual meeting of the council⁷.

During their term of office the chairman and vice-chairman continue to be members of the council, notwithstanding the provisions of the Local Government Act 1972 relating to the retirement of community councillors⁸. Subject to any standing orders⁹ made by the community council, anything authorised or required to be done by, to or before the chairman may be done by, to or before the vice-chairman¹⁰.

1 Local Government Act 1972 s 34(1).

2 Local Government Act 1972 s 34(2). As to the annual meeting see PARA 631; and as to meetings of a community council generally see PARA 46.

3 Local Government Act 1972 s 34(3). If, apart from s 34(8) (see the text and note 8), the person presiding at the meeting would have ceased to be a member of the community council, he is not entitled to vote in the election except in accordance with s 34(3): see s 34(2).

4 Local Government Act 1972 s 34(4). As to disqualification see PARA 119. The chairman of the community council presides at community meetings: see PARA 637.

5 Local Government Act 1972 s 34(5).

6 Local Government Act 1972 s 34(6). In the case of the vice-chairman, there is no provision for payment of expenses.

7 Local Government Act 1972 s 34(7).

8 Local Government Act 1972 s 34(8).

9 As to standing orders see PARA 620.

10 Local Government Act 1972 s 34(9).

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148. Casual vacancies of chairman.

On a casual vacancy¹ occurring in the office of chairman of any council², an election³ to fill the vacancy must be held not later than the next ordinary meeting of the council held after the date on which the vacancy occurs⁴, or if that meeting is held within 14 days after that date, then not later than the next following ordinary meeting of the council⁵. An election to fill a vacancy is conducted in the same manner as an ordinary election⁶. A meeting of the council may be convened by the proper officer⁷ of the authority⁸. In a parish without a separate parish council, a casual vacancy in the office of chairman of the parish meeting must be filled by the parish meeting, and a parish meeting must be convened for the purpose of filling the vacancy forthwith⁹.

1 As to the declaration of a vacancy see PARA 298.

2 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

4 As to the date of casual vacancies see PARA 299.

5 Local Government Act 1972 s 88(1) (amended by SI 1977/1710).

6 Local Government Act 1972 s 88(1) (as amended: see note 5).

7 As to proper officers see PARA 431.

8 Local Government Act 1972 s 88(2) (amended by the Statute Law (Repeals) Act 1978).

9 Local Government Act 1972 s 88(3).

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149. Chairman, vice-chairman and clerk of joint authorities.

A joint authority¹ must in each year appoint a chairman and vice-chairman from among its members². These appointments must be the first business transacted at the annual meeting of the authority³.

On a casual vacancy occurring in the office of chairman, an appointment to fill the vacancy must be made at the next ordinary meeting of the authority held after the date on which the vacancy occurs, or if that meeting is held within 14 days after that date then not later than the next following meeting⁴. Any such meeting may be convened by the proper officer of the authority⁵.

Subject to any standing orders made by the authority⁶, anything authorised or required to be done by or in relation to the chairman may be done by or in relation to the vice-chairman⁷.

The authority may pay to the chairman and vice-chairman for the purpose of enabling him to meet the expenses of his office such allowance as the authority thinks reasonable⁸.

Each joint authority must appoint a person to be the clerk to the authority; and in making the appointment the authority must have regard to the desirability of that person being the chief officer of a constituent council of the authority⁹.

1 As to the meaning of 'joint authority' see PARA 47 note 1.

2 Local Government Act 1985 s 34(1). In the case of an equality of votes in respect of the appointment of a chairman, the person presiding at the meeting must give a casting vote in addition to any other vote he may have: s 34(5).

3 Local Government Act 1985 s 34(2). As to meetings of local authorities generally see PARA 619 et seq.

4 Local Government Act 1985 s 34(6). For the purposes of s 34(6), the vacancy is deemed to have occurred: (1) if the chairman has ceased to be a member of the authority by reason of s 31 (see PARA 118), at the time specified in s 31(2)(b) (see PARA 118 note 6); (2) if the chairman has ceased to be a member by reason of s 32(1) (see PARA 118), when notice thereof is given to the authority under that provision; and (3) in any other case, on the date of the declaration or of receipt of the notice of resignation mentioned in s 32(2) (see PARA 118): s 34(7).

5 Local Government Act 1985 s 34(6). As to the proper officer see PARA 431.

6 As to standing orders see PARA 620.

7 Local Government Act 1985 s 34(3).

8 Local Government Act 1985 s 34(4).

9 Local Government Act 1985 s 34(8).

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(ii) Deputy and Interim Mayors

150. Appointment of deputy mayor.

Where a local authority's¹ executive arrangements² provide for a mayor and cabinet executive³, the executive arrangements must include provision which requires the elected mayor⁴ to appoint one of the members of the executive to be the deputy mayor⁵.

Where executive arrangements provide for a mayor and council manager executive⁶, they must also provide for the appointment of a deputy⁷.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'executive arrangements' see PARA 303.

3 As to the meaning of 'mayor and cabinet executive' see PARA 327.

4 As to the meaning of 'elected mayor' see PARA 320 note 4.

5 See the Local Government Act 2000 Sch 1 para 1(3); and PARA 328. In the case of a local authority in Wales, the deputy mayor is entitled to the style 'dirprwy faer': see the Local Government Act 2000 Sch 1 paras 1(9), 3(16).

6 As to the meaning of 'mayor and council manager executive' see PARA 327. See further PARA 333.

7 See the Local Government Act 2000 Sch 1 para 3(3), (4); and PARA 333.

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151. Term of office of deputy mayor.

Unless he resigns¹, ceases to be a member of a local authority², or is removed from office, the deputy mayor³ holds office until the end of the term of office of elected mayor⁴. The elected mayor⁵ may, if he thinks fit, remove the deputy mayor from office⁶.

1 As to resignation see PARA 297.

2 As to the meaning of 'local authority' see PARA 23.

3 As to the appointment of a deputy mayor see PARA 150.

4 See the Local Government Act 2000 Sch 1 para 1(4) (mayor and cabinet executive), 3(5) (mayor and council manager executive); and PARAS 327, 328, 333.

5 As to the meaning of 'elected mayor' see PARA 320 note 4.

6 See the Local Government Act 2000 Sch 1 para 1(5) (mayor and cabinet executive), 3(6) (mayor and council manager executive); and PARAS 328, 333.

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152. Vacancy and inability to act.

The deputy mayor¹ acts in the place of the elected mayor² when the elected mayor is unfit to act or the post is vacant.³ Where a vacancy occurs in the office of deputy mayor, the elected mayor must appoint another person in his place⁴.

In the case of a mayor and cabinet executive⁵ where the elected mayor and the deputy are unable to act or their respective offices are vacant the executive⁶ must act in the elected mayor's place or must arrange for a member of the executive to act in his place⁷. Where for any reason, the elected mayor and the deputy are unable to act⁸ or their respective offices are vacant and only one other member of the executive is able to act, that other member must act in the elected mayor's place⁹.

In the case of a mayor and council manager executive¹⁰, the council manager¹¹ must act in the elected mayor's place¹². He is entitled to attend, and speak at, meetings of the authority or any committee or sub-committee¹³ but is not entitled to vote at such meetings, except under prescribed circumstances¹⁴. However, with regard to an overview and scrutiny committee or sub-committee, the council manager may only attend and speak at the meetings if invited or required to do so by that committee¹⁵.

1 As to the appointment of a deputy mayor see PARA 150.

2 As to the meaning of 'elected mayor' see PARA 320 note 4.

3 See the Local Government Act 2000 Sch 1 paras 1(7) (mayor and cabinet executive), 3(8) (mayor and council manager executive); and PARAS 328; 333.

4 See the Local Government Act 2000 Sch 1 paras 1(6) (mayor and cabinet executive), 3(7) (mayor and council manager executive); and PARAS 328, 333.

5 As to the meaning of 'mayor and cabinet executive' see PARA 327.

6 As to executive arrangements see PARA 303.

7 See the Local Government Act 2000 Sch 1 para 1(8); and PARA 328.

8 For these purposes, an elected mayor or deputy mayor is to be considered unable to act only if he is either suspended from office or is unfit to act on health grounds: see the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(2); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(2).

9 See the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(3); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(3).

10 As to the meaning of 'mayor and council manager executive' see PARA 327. See further PARA 333.

11 As to the meaning of 'council manager' see PARA 327.

12 See the Local Government Act 2000 Sch 1 para 3(9); and PARA 333.

13 This includes a reference to a joint committee on which the authority is represented or a sub-committee of such a committee: see the Local Government Act 2000 Sch 1 para 3(12); and PARA 333.

14 See the Local Government Act 2000 Sch 1 para 3(10); and PARA 333. Under certain circumstances the council manager of a local authority is entitled to vote at a meeting of a joint committee, or sub-committee of such a committee: see Sch 1 para 3(12A); and PARA 333.

15 See the Local Government Act 2000 Sch 1 para 3(11); and PARA 333.

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153. Interim mayor.

In the case of mayor and cabinet executives¹, where for any reason the elected mayor² is unable to act or the office of elected mayor is vacant and no other member of the executive is able to act or, because of vacancies, there are no other members of the executive, the authority must, as soon as reasonably practicable, appoint a councillor of the authority (the 'interim mayor')³ to act in the place of elected mayor⁴. The authority must also appoint at least two, but not more than nine, councillors (the 'interim members')⁵ of the authority to act in the place of members of the executive appointed by the elected mayor⁶. The interim mayor must not appoint councillors of the authority to the executive nor remove them from office⁷. Notwithstanding the relevant provisions with regard to disqualification⁸, a person is not disqualified from being a member of a local authority or, as the case may be a joint authority, solely because he is an interim mayor or an interim member⁹. Where the interim mayor or member ceases to be a councillor he at the same time ceases to be an interim mayor or member¹⁰. The authority may if it thinks fit remove the interim mayor or an interim member from office¹¹. Any interim mayor and interim member, unless he resigns¹², ceases to be a councillor or is removed from office, holds office until: the elected mayor becomes able to act; a new elected mayor takes up office; or a member of the executive appointed by the elected mayor becomes able to act, whichever comes first¹³.

1 As to the meaning of 'mayor and cabinet executive' see PARA 327.

2 As to the election of mayors see PARA 322.

3 Or, in Wales, he may also be referred to as 'y maer dros dro': Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(4).

4 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(4); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(4).

5 Or, in Wales, they may be referred to as 'yr aelodau dros dro': Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(4).

6 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(4); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(4).

7 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(5); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(5). The interim mayor and members must be treated as if they are not members of the executive for the purposes of the Local Government Act 2000 s 11(8) (see PARA 327): Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(6); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(6).

8 I.e. the Local Government Act 1972 s 80 (see PARA 119) or the Local Government Act 1985 s 35 (see PARA 121): Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(7); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(7).

9 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(7); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(7).

10 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(8); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(8).

11 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(9); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(9).

12 le as interim member or councillor: Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(10); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(10).

13 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 47(10); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 41(10).

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(iii) Executive Leaders and Members

154. Mayor and cabinet executive.

In the case of any local authority¹ in England and Wales a mayor and cabinet executive² consists of an elected mayor³ and two or more councillors of the local authority appointed by the elected mayor⁴.

Where a councillor is appointed by an elected mayor as a member of a mayor and cabinet executive, unless the councillor resigns as a member of the executive or ceases to be a councillor, he holds office until the end of the term of office of the elected mayor⁵. However, the elected mayor may, if he thinks fit, remove him⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'mayor and cabinet executive' see PARA 327.

3 As to the meaning of 'elected mayor' see PARA 320 note 4.

4 See the Local Government Act 2000 s 11(2), Sch 1 para 1; and PARAS 327, 328. As to the appointment of an elected mayor's assistant see PARA 329. The constitution of the local authority must include a description of any rules governing the appointment of the executive: see the Local Government Act 2000 (Constitutions) (England) Direction 2000 para 3(l)(iii).

5 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 46(2)(a); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 40(2)(a).

6 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 46(2)(b); Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, art 40(2)(b).

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155. Mayor and council manager executive in Wales.

In the case of any local authority in Wales¹, a mayor and council manager executive² may consist of an elected mayor of the authority³, and an officer of the authority (the 'council manager') appointed to the executive by the authority⁴.

- 1 As to areas and authorities in Wales see PARA 37 et seq.
- 2 As to the meaning of 'mayor and council manager executive' see PARA 327.
- 3 As to the election of a mayor see PARA 322.
- 4 See the Local Government Act 2000 s 11(4), Sch 1 para 3; and PARAS 327, 333.

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156. Leader and cabinet executive in Wales.

In the case of any local authority in Wales¹ a leader and cabinet executive² may consist of a councillor of the authority elected as leader of the executive by the authority³, and two or more councillors of the authority appointed to the executive by one of either the executive leader, or the authority⁴.

- 1 As to areas and authorities in Wales see PARA 37 et seq.
- 2 As to the meaning of 'leader and cabinet executive' see PARA 327.
- 3 As to the meaning of 'executive leader' see PARA 327.
- 4 See the Local Government Act 2000 s 11(3), Sch 1 para 2; and PARAS 327, 332.

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157. Leader and cabinet executive in England.

In the case of a local authority in England¹ a leader and cabinet executive² consists of one of the authority's councillors elected by the authority as leader of the executive³ and two or more of the authority's councillors appointed to the executive by the executive leader⁴.

- 1 As to areas and authorities in England see PARA 24 et seq.
- 2 As to the meaning of 'leader and cabinet executive' see PARA 327.

3 As to the election of the executive leader see PARA 158 et seq.

4 See the Local Government Act 2000 s 11(2A), Sch 1 para 1A; and PARAS 327, 331.

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158. Election and removal of executive leader.

An executive leader of a local authority in England¹ which operates a leader and cabinet executive² may not be elected or removed from office except in accordance with the provisions that follow³.

Where a local authority is subject to whole-council elections⁴, and is, on the day of a post-election annual meeting⁵, operating a leader and cabinet executive⁶, the executive leader is to be elected at that meeting⁷. The executive leader's term of office starts on the day of his election as leader⁸ and ends on the day of the post-election annual meeting which follows his election as leader⁹. If the leader is removed from office his term of office ends on the day of his removal¹⁰.

Where a council is subject to partial-council elections¹¹, and is, on the day of a relevant annual meeting¹², operating a leader and cabinet executive¹³, the executive leader is to be elected at that meeting¹⁴. The executive leader's term of office starts on the day of his election¹⁵ and ends on the day when the council holds its first annual meeting after the leader's normal day of retirement as a councillor¹⁶. If the executive leader is removed from office his term of office ends on the day of his removal¹⁷, and, where the local authority becomes subject to whole-council elections, it ends on the day of the annual meeting which follows the first whole-council elections¹⁸.

Executive arrangements by a local authority which provide for a leader and cabinet executive may include provision for the council to remove the executive leader by resolution¹⁹. If a council passes a resolution to remove the executive leader, a new executive leader is to be elected at the meeting at which the leader is removed from office or at a subsequent meeting²⁰.

The Secretary of State²¹ may by regulations make provision²² as to: (1) the dates on which and years in which executive leaders of leader and cabinet executives are to be elected by local authorities²³; (2) the intervals between elections of executive leaders of leader and cabinet executives²⁴; (3) the term of office of an executive leader of a leader and cabinet executive²⁵; and (4) the filling of vacancies in the office of executive leader of a leader and cabinet executive²⁶.

1 As to areas and authorities in England see PARA 24 et seq.

2 As to the meaning of 'leader and cabinet executive' see PARA 327.

3 See the Local Government Act 2000 s 44G (ss 44A-44H added by the Local Government and Public Involvement in Health Act 2007 s 67).

4 Local Government Act 2000 s 44A(1)(a) (as added: see note 3). A local authority is subject to whole-council elections if, under the scheme for the ordinary elections of its councillors, all of the councillors are elected in each year in which the elections are held: Local Government Act 2000 s 44A(4)(a) (as so added). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

5 'Post-election annual meeting' means the first annual meeting of a local authority to be held after ordinary elections take place: Local Government Act 2000 s 44A(4)(b) (as added: see note 3).

- 6 Local Government Act 2000 s 44A(1)(b) (as added: see note 3).
- 7 Local Government Act 2000 s 44A(2) (as added: see note 3). In the event the council fails to elect the leader at the meeting, he is to be elected at a subsequent meeting of the council: s 44A(3) (as so added).
- 8 See the Local Government Act 2000 s 44D(1), (2) (as added: see note 3).
- 9 Local Government Act 2000 s 44D(3) (as added: see note 3).
- 10 Local Government Act 2000 s 44D(4) (as added: see note 3). An executive leader is removed from office in accordance with s 44C: see the text and notes 19-20.
- 11 See the Local Government Act 2000 s 44B(1)(a) (as added: see note 3). A local authority is subject to partial-council elections if, under the scheme for the ordinary elections of its councillors, one-half or one-third (or in either case, as nearly as may be) of the councillors are elected in each year in which the elections are held: Local Government Act 2000 s 44B(4)(a) (as so added).
- 12 'Relevant annual meeting' means the first annual meeting to be held after the local authority starts to operate the leader and cabinet executive or any subsequent annual meeting held on a day when an executive leader's term of office is to end by virtue of s 44E(3) (see the text and note 16): s 44B(4)(b) (as added: see note 3).
- 13 Local Government Act 2000 s 44B(1)(b) (as added: see note 3).
- 14 Local Government Act 2000 s 44B(2) (as added: see note 3). If the council fails to elect the executive leader at the relevant annual meeting, the executive leader is to be elected at a subsequent meeting of the council: s 44B(3) (as added: see note 3).
- 15 See the Local Government Act 2000 s 44E(1), (2) (as added: see note 3).
- 16 Local Government Act 2000 s 44E(3) (as added: see note 3). The normal day of retirement as a councillor is the day when the leader would next be required to retire as a councillor if the provisions under Local Government Act 2000 s 44F (see PARA 159) relating to the continuation of his office as leader are disregarded: Local Government Act 2000 s 44E(7) (as added: see note 3).
- 17 Local Government Act 2000 s 44E(5) (as added: see note 3). An executive leader is removed from office in accordance with s 44C: see the text and notes 19-20.
- 18 Local Government Act 2000 s 44E(6) (as added: see note 3).
- 19 Local Government Act 2000 s 44C(1) (as added: see note 3).
- 20 Local Government Act 2000 s 44C(2) (as added: see note 3).
- 21 As to the Secretary of State see PARA 96.
- 22 Local Government Act 2000 s 44H(1). The Local Government Act 2000 ss 44A-44E are subject to regulations so made: see s 44H(2) (as added: see note 3). At the date at which this volume states the law no regulations had been made under this section.
- 23 Local Government Act 2000 s 44H(1)(a) (as added: see note 3).
- 24 Local Government Act 2000 s 44H(1)(b) (as added: see note 3).
- 25 Local Government Act 2000 s 44H(1)(c) (as added: see note 3).
- 26 Local Government Act 2000 s 44H(1)(d) (as added: see note 3).

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MEMBERS OF LOCAL AUTHORITIES/(3) CHAIRMAN, APPOINTMENTS AND CO-OPTIONS/(iii)
Executive Leaders and Members/159. Term of office of executive leader.

159. Term of office of executive leader.

The executive leader of a leader and cabinet executive in England¹ remains a member of the council during his term of office as leader². Accordingly, an enactment which provides for his earlier retirement as councillor does not apply³.

1 As to the election and removal of executive leaders of leader and cabinet executives in England see PARA 158; and as to leader and cabinet executives in England see PARA 327.

2 Local Government Act 2000 s 44F(1) (added by the Local Government and Public Involvement in Health Act 2007 s 67).

3 Local Government Act 2000 s 44F(2) (as added: see note 2). This does not affect anything by which the leader may cease be a councillor otherwise than by retirement including disqualification or resignation: s 44F(3) (as so added).

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(iv) Co-opted Members

160. Power to appoint co-optees.

A local authority¹ may co-opt persons who are not members of the appointing authority² in the following circumstances:

- 241 (1) a committee or a sub-committee of a local authority or a joint committee, including its sub-committees³, may include persons who are not members of the appointing authority or authorities, or in the case of a sub-committee the authority or authorities of which they are a sub-committee⁴;
- 242 (2) a committee appointed to advise the authority⁵ on any matter relating to the discharge of its functions may consist of persons who are not members of the appointing authority⁶;
- 243 (3) an overview and scrutiny committee⁷ of a local authority or any sub-committee may include persons who are not members of the authority⁸.

1 As to the meaning of 'local authority' see PARA 23.

2 As to membership of a local authority see PARA 117 et seq.

3 Ie a committee appointed under Local Government Act 1972 s 102(1) or (1A) (see PARA 371) and not including a committee for regulating and controlling the finance of the local authority or of its area.

4 See the Local Government Act 1972 s 102(3); and PARA 371.

5 As to advisory committees see PARA 371.

6 See the Local Government Act 1972 s 102(4); and PARA 371.

7 As to overview and scrutiny committees see PARA 342.

8 See the Local Government Act 2000 s 21(10); and PARA 345. Co-opted members are, in general, not entitled to vote at committee meetings: see s 23, Sch 1 para 12.

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161. Standards committees.

A standards committee¹ of a relevant authority in England² or a police authority in Wales³ must include at least one person who is not a member⁴, or an officer⁵, of that or any other relevant authority⁶, and must be chaired by such a person⁷.

1 As to standards committees see PARA 238.

2 As to the meaning of 'relevant authority' see PARA 232 note 4.

3 As to the meaning of 'police authority' see PARA 233 note 5.

4 As to membership of a local authority see PARA 117 et seq.

5 As to officers of an authority see PARA 425 et seq.

6 Local Government Act 2000 s 53(4)(b).

7 Local Government Act 2000 s 53(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 187).

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162. Disqualification.

A person who is disqualified¹ for being elected or being a member of a local authority² is disqualified for being a member of a committee including a sub-committee of that authority or being a representative of that authority on a joint committee³, including a sub-committee⁴.

1 He is disqualified under the Local Government Act 1972 Pt V (ss 79-100): see PARA 119.

2 As to membership of a local authority see PARA 117 et seq.

3 As to joint committees see PARA 380.

4 Local Government Act 1972 s 104(1).

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(v) Appointment of Parish and Community Councillors

163. Temporary appointments.

Where there are so many vacancies in the office of parish or community councillor that the parish or community council¹ is unable to act, the district council² or Welsh principal council³ may by order appoint persons to fill all or any of the vacancies until other councillors are elected and take up office⁴. Two copies of every order so made must be sent to the Secretary of State or the Welsh Ministers⁵.

1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 In the case of a common parish council under which are grouped, by virtue of the Local Government Act 1972 s 11(5) (see PARA 29), parishes situated in different districts, the reference to a district council must be construed as a reference to the council of the district in which there is the greater number of local government electors for the parishes in the group: Local Government Act 1972 s 91(2).

3 As to the meaning of 'principal council' see PARA 23. As to areas and authorities in Wales see PARA 37 et seq.

4 Local Government Act 1972 s 91(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 24).

5 Local Government Act 1972 s 91(3). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

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164. Appointed parish councillors.

A parish council¹ may appoint persons to be councillors of the council². The Secretary of State or the Welsh Ministers³ may by regulations make provision about the appointment of such persons⁴, and the holding of office after appointment⁵. These regulations may, in particular, make provision about any of the following matters:

- 244 (1) persons who may be appointed⁶;
- 245 (2) the number of persons who may be appointed⁷;
- 246 (3) the term of office of persons appointed⁸;
- 247 (4) the right of persons appointed to participate in decision-making by the council (including voting)⁹;
- 248 (5) purposes for which a person appointed is to be treated as an elected councillor¹⁰;
- 249 (6) the filling of vacancies¹¹.

1 As to parish councils see PARA 27 et seq.

2 Local Government Act 1972 s 16A(1) (s 16A added by the Local Government and Public Involvement in Health Act 2007 s 76(1), (4)). In exercising a function under or by virtue of the Local Government Act 1972 s 16A a parish council must have regard to any guidance issued by the Secretary of State about the exercise of that function: s 16A(4).

3 As to the Secretary of State and the Welsh Ministers see PARA 96-97.

4 Local Government Act 1972 s 16A(2)(a) (as added: note 2).

5 Local Government Act 1972 s 16A(2)(b) (as added: note 2).

6 Local Government Act 1972 s 16A(3)(a) (as added: note 2).

7 Local Government Act 1972 s 16A(3)(b) (as added: note 2).

- 8 Local Government Act 1972 s 16A(3)(c) (as added: note 2).
- 9 Local Government Act 1972 s 16A(3)(d) (as added: note 2).
- 10 Local Government Act 1972 s 16A(3)(e) (as added: note 2).
- 11 Local Government Act 1972 s 16A(3)(f) (as added: note 2).

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(4) ALLOWANCES AND PAYMENTS

(i) Statutory Framework

A. IN GENERAL

165. Types of payment authorised.

Allowances and other payments to members are governed by: (1) schemes made by local authorities¹ in accordance with regulations under the Local Government and Housing Act 1989²; (2) regulations under the Local Government Act 2000³; (3) regulations under the Superannuation Act 1972⁴; and (4) the Local Government Act 1972⁵.

In outline, the types of allowances presently are as follows:

- 250 (a) for members of local authorities in England: basic, special responsibility, dependants' carers', travel and subsistence and co-optees' allowances provided for under schemes⁶;
- 251 (b) for members of local authorities in Wales:
13
- 19. (i) where they are members of county and county borough councils: basic, special responsibility and care allowances provided for under schemes, together with travel and subsistence and co-optees' allowances⁷;
- 20. (ii) where they are members of national park authorities: basic, special responsibility, attendance, care and financial loss allowances provided for under schemes⁸;
- 21. (iii) where they are members of Welsh fire authorities: basic and special responsibility allowances provided for under schemes, together with care and travel or subsistence allowances⁹;
- 14
- 252 (c) for members of parish councils: basic, travel and subsistence allowances¹⁰;
- 253 (d) for members of community councils: attendance, financial loss, and travelling and subsistence allowances, together with allowances for attending meetings and conferences¹¹.

In addition to the above allowances, there are provisions for the payment to members of expenses incurred on official and courtesy visits¹².

1 As to the meaning of 'local authority' see PARA 23.

- 2 See the Local Government and Housing Act 1989 s 18; and PARA 166.
- 3 See the Local Government Act 2000 s 100; and PARA 168.
- 4 See the Superannuation Act 1972 s 7; and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.
- 5 See the Local Government Act 1972 ss 173-176; and PARAS 171-176.
- 6 See PARAS 178-193.
- 7 See PARAS 194-210.
- 8 See PARA 211.
- 9 See PARA 212.
- 10 See PARAS 213-219.
- 11 See PARAS 171, 172, 220.
- 12 See PARAS 175-177.

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B. ALLOWANCES UNDER SCHEMES UNDER THE LOCAL GOVERNMENT AND HOUSING ACT 1989

166. Power to make regulations authorising or requiring schemes for allowances.

The Secretary of State or the Welsh Ministers¹ may by regulations authorise or require any such relevant authority² as may be specified or described in the regulations to make a scheme³ providing for the payment of:

- 254 (1) a basic allowance⁴ for every member of the authority who is a councillor⁵;
- 255 (2) an attendance allowance⁶ in relation to the carrying out by such a member of duties as may be specified in or determined under the regulations⁷; and
- 256 (3) a special responsibility allowance⁸ for a member who has such special responsibilities in relation to the authority as may be so specified or determined⁹.

However, head (2) above does not apply in relation to a district council, county council, county borough council or London borough council¹⁰.

The regulations may also authorise or require a scheme made by a relevant authority to include provision for the payment to appointed members¹¹ of allowances in respect of certain losses of earnings and expenses¹².

Regulations may authorise or require a scheme made by a district council, county council, county borough council or London borough council to include provision for the payment to members of the council of allowances in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of their duties as members¹³.

In making or operating any scheme authorised or required by regulations under this provision, a district council, county council, county borough council or London borough council must have regard to any guidance for the time being issued by the Secretary of State or the Welsh Ministers¹⁴.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 For these purposes, 'relevant authority' means: (1) a local authority of any of the descriptions specified in the Local Government and Housing Act 1989 s 21(1), other than those in s 21(1)(d), (g) and (j), or in s 21(2) (see PARA 23); (2) any body on which a body which is a relevant authority by virtue of head (1) above is represented and which is designated as a relevant authority for the purposes of this provision by regulations made by the Secretary of State; or (3) any appeal committee so designated which is constituted in accordance with the Education Act 1996 Sch 33 para 2 or 3 (both repealed: see now the School Standards and Framework Act 1998 s 94; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 415); Local Government and Housing Act 1989 s 18(5) (definition amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 37; and the Education Act 1996 s 582(1), Sch 37 para 97).

For the purposes of the Local Government and Housing Act 1989 s 18, the Broads Authority and a conservation area of outstanding beauty are designated as relevant authorities: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(2)(a). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to areas of outstanding natural beauty see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658 et seq.

3 See the Local Government and Housing Act 1989 s 18(1) (amended by the Local Government Act 2000 s 99(3), (4)). As to the regulations made in respect of England see the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021. As to the regulations made in relation to Wales see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895; the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555; and the Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086.

4 As to basic allowances for local authority members see PARAS 180, 196.

5 Local Government and Housing Act 1989 s 18(1)(a). For these purposes, any reference to a councillor includes a reference to a member of the authority concerned who, in accordance with regulations under this provision, is to be treated as if he were a councillor: s 18(6). In addition, any member of an authority listed in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1) (see PARA 178) must be treated as if he were a councillor: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(2)(b).

6 As to attendance allowances for community councillors under the Local Government Act 1972 see PARA 171. As to community councils see PARA 41 et seq.

7 Local Government and Housing Act 1989 s 18(1)(b).

8 As to special responsibility allowances for local authority members see PARAS 181, 197.

9 Local Government and Housing Act 1989 s 18(1)(c).

10 Local Government and Housing Act 1989 s 18(1A) (added by the Local Government Act 2000 s 99(3), (4)).

11 For these purposes, 'appointed member' means any person who is a member of the authority without being a councillor or who is a member of one or more of the authority's committees or sub-committees without being a member of the authority: Local Government and Housing Act 1989 s 18(5). As to committee and sub-committees see PARA 369 et seq.

12 See the Local Government and Housing Act 1989 s 18(2). The regulations may authorise or require a scheme to include provision for the payment of allowances in respect of such losses of earnings and expenses as: (1) are necessarily sustained or incurred in the carrying out, in connection with membership of the authority or any committee or sub-committee of the authority, of duties specified in or determined under the regulations; and (2) are not of a description in respect of which provision is made for an allowance under the Local Government Act 1972 ss 174-176 (see PARAS 174-176): see the Local Government and Housing Act 1989 s 18(2) (a), (b).

13 Local Government and Housing Act 1989 s 18(2A) (added by the Local Government Act 2000 s 99(3), (5)).

14 Local Government and Housing Act 1989 s 18(5A) (added by the Local Government Act 2000 s 99(3), (9)).

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167. Further provision that may be made in relation to such schemes.

Regulations¹ may contain such provision as the Secretary of State or the Welsh Ministers² consider appropriate for requiring a scheme made by a relevant authority³:

- 257 (1) to make it a condition of any payment by way of allowance that, in the financial year to which the payment would relate, the aggregate amount which the authority has paid out or is already liable to pay out under the scheme does not exceed such maximum amount as may be specified in or determined under the regulations⁴;
- 258 (2) to make provision for different maximum amounts to be applicable, for the purposes of any such condition, in relation to different allowances or in relation to different members or members of different groups⁵;
- 259 (3) to make provision in relation to claims which cannot be paid by virtue of any such condition and make provision for the payment to members of the authority who are councillors⁶ of an amount by way of supplement to the basic allowance where, in any financial year, the aggregate paid out or owing under the scheme is less than an amount specified in or determined under the regulations⁷;
- 260 (4) to provide that the amount authorised⁸ to be paid by way of allowance in any case is not to exceed such amount as may be so specified or determined⁹;
- 261 (5) to contain such provision as may be so specified or determined with respect to the general administration of the scheme, with respect to the manner in which, time within which and forms on which claims for any allowance are to be made and with respect to the information to be provided in support of any such claim¹⁰;
- 262 (6) to contain such provision as may be so specified or determined for avoiding the duplication of payments or of allowances, for determining the bodies by which payments of allowances are to be made and for the apportionment of payments between different bodies¹¹.

Regulations may make provision for or in connection with:

- 263 (a) enabling district councils, county councils, county borough councils or London borough councils to determine which members of the council are to be entitled to pensions, allowances or gratuities, and in connection with treating the basic allowance or the special responsibility allowance as amounts in respect of which such pensions, allowances or gratuities are payable¹²;
- 264 (b) requiring a district council, county council, county borough council or London borough council to establish and maintain a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of the council¹³;
- 265 (c) enabling a panel established by a body specified in the regulations to exercise such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of such district councils, county councils or London borough councils in England as may be specified in the regulations¹⁴;

- 266 (d) the establishment on a permanent or temporary basis of a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of county councils and county borough councils in Wales¹⁵.

Regulations under heads (b)-(d)¹⁶ may include provision: (i) for or in connection with enabling the panel to make recommendations to a council on the level of allowances payable to members of the council¹⁷; (ii) for or in connection with enabling the panel to make recommendations to a council as to which members of the council are to be entitled to pensions, allowances or gratuities¹⁸; (iii) which permits different recommendations to be made in relation to different councils or descriptions of council¹⁹.

Any regulations made under the above provisions²⁰ may also: (A) prohibit the payment, otherwise than in accordance with specified provisions²¹ or in such other cases as may be specified in the regulations, of any allowance to a member of a relevant authority who is a councillor or to any appointed member²² of a relevant authority²³; (B) impose requirements on a relevant authority with respect to the publication, in the minutes of that authority or otherwise, of the details of amounts paid in pursuance of a scheme made under the regulations²⁴; (C) make provision with respect to the amendment, revocation or replacement of a scheme made by a relevant authority under the regulations²⁵; and (D) contain such incidental provision and such supplemental, consequential and transitional provision in connection with the other provisions of the regulations as the Secretary of State considers appropriate²⁶.

1 As to the power to make regulations authorising or requiring schemes for allowances see PARA 166.

2 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 See the Local Government and Housing Act 1989 s 18(3) (amended by the Local Government Act 2000 s 99(3), (6)). This provision is without prejudice to the generality of the powers conferred by the Local Government and Housing Act 1989 s 18(1), (1A), (2), (2A) (see PARA 166): see s 18(3) (as so amended). As to the meaning of 'relevant authority' see PARA 166 note 2.

4 Local Government and Housing Act 1989 s 18(3)(a).

5 Local Government and Housing Act 1989 s 18(3)(b).

6 As to the meaning of 'councillor' see PARA 166 note 5.

7 Local Government and Housing Act 1989 s 18(3)(c).

8 Ie authorised by virtue of the Local Government and Housing Act 1989 s 18(2): see PARA 166.

9 Local Government and Housing Act 1989 s 18(3)(d).

10 Local Government and Housing Act 1989 s 18(3)(e).

11 Local Government and Housing Act 1989 s 18(3)(f).

12 Local Government and Housing Act 1989 s 18(3A) (s 18(3A)-(3G) added by the Local Government Act 2000 s 99(3), (7)). As to regulations made under this section see the Local Authorities (Allowances for Members of County and County Borough Councils) (Past Service Awards) (Wales) Regulations 2003, SI 2003/2676.

13 Local Government and Housing Act 1989 s 18(3B) (as added: see note 12). Regulations under s 18(3B) may include provision: (1) with respect to the number of persons who may or must be appointed to the panel of a council; (2) with respect to the persons who may or must be appointed to the panel of a council; (3) for or in connection with the appointment by councils of joint panels: s 18(3E) (as so added).

14 Local Government and Housing Act 1989 s 18(3C) (as added: see note 12). Regulations under s 18(3C) may include provision: (1) with respect to the number of persons who may or must be appointed to the panel; (2) with respect to the persons who may or must be appointed to that panel: s 18(3F) (as so added).

15 See the Local Government and Housing Act 1989s 18(3D) (as added: see note 12).

- 16 le under Local Government and Housing Act 1989 s 18(3B) (see the text to note 13), s 18(3C) (see the text to note 14) or s 18(3D) (see the text to note 15).
- 17 Local Government and Housing Act 1989 s 18(3G)(a) (as added: see note 12).
- 18 Local Government and Housing Act 1989 s 18(3G)(b) (as added: see note 12).
- 19 Local Government and Housing Act 1989 s 18(3G)(c) (as added: see note 12).
- 20 le regulations under the Local Government and Housing Act 1989 s 18: s 18(4).
- 21 le in accordance with the Local Government Act 1972 ss 174-176: see PARAS 174-176.
- 22 As to the meaning of 'appointed member' see PARA 166 note 11.
- 23 Local Government and Housing Act 1989 s 18(4)(a).
- 24 Local Government and Housing Act 1989 s 18(4)(b).
- 25 Local Government and Housing Act 1989 s 18(4)(ba) (added by the Local Government Act 2000 s 99(3), (8)).
- 26 Local Government and Housing Act 1989 s 18(4)(c).

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C. ALLOWANCES UNDER THE LOCAL GOVERNMENT ACT 2000

168. Power to make regulations.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision with respect to²: (1) allowances payable to members of a parish council³; (2) travelling and subsistence allowances payable to members⁴ of such relevant authorities⁵ as may be prescribed⁶; (3) allowances payable to members of such relevant authorities as may be prescribed for attending conferences or meetings⁷; (4) the reimbursement of expenses incurred by members of such relevant authorities as may be prescribed⁸.

Before making any regulations under these provisions, the Secretary of State or Welsh Ministers must consult such representatives of local government and such other persons, if any, as he or they consider appropriate⁹.

In addition, the provision which may be made by regulations under the Superannuation Act 1972¹⁰ includes provision for or in connection with the provision of pensions, allowances or gratuities to or in respect of such members of a local authority as may be prescribed by the regulations¹¹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 See the Local Government Act 2000 s 100(1), (7)(a). As to regulations made under this section see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895; the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021; the Local Authorities (Members' Allowances) (England) (Amendment) Regulations 2003, SI 2003/1692; the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555; the Local Authorities (Members' Allowances) (England) (Amendment) Regulations 2004, SI 2004/2596; and the Local Authorities (Allowances for Members) (Wales) Regulations 2007,

SI 2007/1086. The provision which may be made under s 100 includes provision which amends or repeals any provisions of the Local Government Act 1972 ss 173-178 (see PARA 171 et seq): Local Government Act 2000 s 100(4).

3 Local Government Act 2000 s 100(1)(a). In its application to Wales, s 100 has effect as if for any reference to a parish council there were substituted a reference to a community council: s 100(7)(b). As to parish councils see PARA 27 et seq; as to community councils see PARA 41 et seq.

4 For these purposes, a member of a committee or sub-committee of a relevant authority is to be treated as a member of the authority: Local Government Act 2000 s 100(2). As to committees and sub-committees generally see PARA 369 et seq.

5 For these purposes, 'relevant authority' means: (1) a body specified in the Local Government and Housing Act 1989 s 21(1) (see PARA 23); (2) a body on which a body falling within head (1) is represented; (3) a parish council: Local Government Act 2000 s 100(6).

6 Local Government Act 2000 s 100(1)(b). For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State or the Welsh Ministers: s 100(6), (7)(a). The provision which may be made under s 100(1)(b) includes provision with respect to allowances in respect of travel by bicycle or by any other non-motorised form of transport: s 100(3).

7 Local Government Act 2000 s 100(1)(c).

8 Local Government Act 2000 s 100(1)(d).

9 Local Government Act 2000 s 100(5), (7)(a).

10 Ie under the Superannuation Act 1972 s 7: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875. As to regulations made under this section see the Local Government (Gratuities) (Members of County Councils and County Borough Councils) (Wales) Regulations 2003, SI 2003/2437.

11 Local Government Act 2000 s 99(1).

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D. OTHER PROVISIONS

169. Disapplication.

The provisions in the Local Government Act 1972 with regard to the payment of allowances¹ are now very limited in their operation, and, with some exceptions, continue to apply only to community councils². The principal provisions have been disapplied in relation to most local authorities in England³, and in relation to county, and county borough councils⁴, national park authorities⁵ and fire authorities in Wales⁶. Provision concerning the payment of expenses for making and receiving official and courtesy visits remain applicable to local authorities in Wales⁷ but are applicable in relation to local authorities in England only in respect of expenses connected with receiving courtesy visits⁸.

1 Ie the Local Government Act 1972 ss 173-178: see PARA 171 et seq.

2 The Local Government Act 1972 s 174 (see PARA 174) does not apply to Community Councils: see the Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 15(3). As to community councils see PARA 41 et seq.

3 The Local Government Act 1972 ss 173-175, 176(1)(a), (2) (see PARA 171 et seq) are disapplied as respects the following authorities: (1) a district council; (2) a county council; (3) a London borough council; (4) the Council of the Isles of Scilly; (5) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; (6) a joint authority established by the Local

Government Act 1985 Pt IV; (7) the London Fire and Emergency Planning Authority; (8) the Broads Authority; (9) a national park authority; (10) a conservation board of an area of outstanding natural beauty; and (11) a parish council, for all purposes other than (a) the payment of any allowance payable to members of an admissions appeal panel constituted in accordance with regulations made by the Secretary of State under the provisions of the School Standards and Framework Act 1998 (see **EDUCATION** vol 15(1) (2006 Reissue) PARAS 415, 423); and (b) the payment of any allowance payable to members of an exclusions appeal panel constituted in accordance with regulations made by the Secretary of State under the provisions of the Education Act 2002 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 562): see the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 34(1)(a), (4) (reg 34(4) amended by SI 2004/3168). As respects parish councils the disapplication took effect on 31 December 2003, and as respects any other authority the disapplication takes effect from the date upon which such authority makes a scheme in accordance with Pts 2, 3: see reg 34(2), (3) (reg 34(2) amended by SI 2003/1692). As to areas and authorities in England see PARA 24 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to joint authorities see PARA 47 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 The Local Government Act 1972 ss 174, 175, 177 do not apply to county and county borough councils in Wales: see the Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086, regs 2, 42.

5 The Local Government Act 1972 ss 174, 175, 177 do not apply to national park authorities in Wales: see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 20(3) (partially revoked by SI 2007/1086).

6 The Local Government Act 1972 ss 174, 175 are disapplied as respects fire authorities in Wales: see the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/255, reg 20.

7 le the Local Government Act 1972 s 176: see PARA 176.

8 le the Local Government Act 1972 s 176(1)(b): see PARA 176. See also note 3.

UPDATE

169 Disapplication

NOTE 6--Reference to SI 2004/255 should be to SI 2004/2555.

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170. Power to make regulations.

The Secretary of State or the Welsh Ministers¹ may make regulations² as to the manner in which the provisions relating to allowances³ are to be administered, and in particular may make regulations⁴: (1) providing for the avoidance of duplication in payments⁵ and for the determination of the body or bodies by whom any payments are to be made, and, where such payments are to be made by more than one body, for the apportionment between those bodies of the sums payable⁶; (2) specifying the forms to be used and the particulars to be provided for the purpose of claiming payments⁷; (3) providing for the publication by a body⁸, in the minutes of that body or otherwise, of details of such payments⁹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the regulations that have been made see the Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895. A statutory instrument containing regulations under the Local Government Act 1972 s 173 (and PARAS 171-172) or s 177 (see PARA 177) or s 178 is subject to

annulment in pursuance of a resolution of either House of Parliament: s 178(2) (amended by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 29).

3 The provisions of the Local Government Act 1972 ss 173-176: see PARA 171 et seq.

4 Local Government Act 1972 s 178(1). Section 178(1) applies to charter trustees as though they were community councillors: s 246(16). As to charter trustees see PARA 133. As to community councils see PARA 41 et seq.

5 The in payments under the Local Government Act 1972 ss 173-176 (and PARA 171 et seq), or between payments under any of those provisions and any other Act: s 178(1)(a).

6 Local Government Act 1972 s 178(1)(a). As to the payment of allowances see PARA 189.

7 Local Government Act 1972 s 178(1)(b). The payments referred to are those under ss 173-176: see PARA 171 et seq.

8 The a body to which the Local Government Act 1972 ss 173-175 apply: see PARA 171 et seq.

9 Local Government Act 1972 s 178(1)(c).

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171. Attendance allowances for community councillors.

Any member of a community council¹ who is a councillor² is entitled³ to receive a payment by way of an attendance allowance, that is to say, a payment for the performance of any approved duty⁴, being a payment of such reasonable amount, not exceeding the prescribed amount⁵, as the community council may determine, unless a financial loss allowance notice⁶ is effective in relation to the councillor⁷.

The amount of any allowance determined by a community council may vary according to the time of day and the duration of the duty, but must be the same for all members of the council entitled to the allowance in respect of a duty of any description at the same time of day and of the same duration⁸.

However, a member of a community council is not entitled to any payment in respect of the performance as such a member of an approved duty within the community or, in the case of a community grouped⁹ under a common community council, the area of the group¹⁰.

1 As to community councils see PARA 41 et seq. Note that although the Local Government Act 1972 s 173 refers to parish or community councils it has been disapplied in relation to the former: see the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 34(1)(a), (2); and PARA 169 note 3.

2 'Any member . . . who is a councillor' refers to members of a council who are councillors of the particular council and does not include members of another council who are deemed to be members of the particular authority by having been appointed to one of its committees: *Hopson v Devon County Council* [1978] 1 All ER 1205, [1978] 1 WLR 553.

3 The entitlement is subject to the Local Government Act 1972 s 173(6): see the text and notes 10-11.

4 As to the meaning of 'approved duty' see PARA 177.

5 The amount may be prescribed by reference to any period of 24 hours: Local Government Act 1972 s 173(2). The amount prescribed for the purpose of the attendance allowance for members of community councils is £32.46 for any period not exceeding 24 hours and for this purpose a period of 24 hours begins at 3 am: Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 5(1). As to the power to make regulations see PARA 170.

6 As to the meaning of 'financial loss allowance notice' see PARA 173 note 5.

7 Local Government Act 1972 s 173(1) (amended by the Local Government, Planning and Land Act 1980 s 24(1); and the Local Government and Housing Act 1989 s 194, Sch 11 para 26). A member is not entitled to payment of more than one attendance allowance in respect of any period of 24 hours: Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 5(2). Nor is a member entitled to payment of an attendance allowance: (1) in respect of an approved duty in relation to which that member is entitled to payment of a financial loss allowance; or (2) if such payment would be contrary to a provision made by or under any enactment: reg 5(3).

Charter trustees are entitled to attendance allowances as though they were community councillors in respect of their charter area: Local Government Act 1972 s 246(16). As to charter trustees see PARA 113.

8 Local Government Act 1972 s 173(3) (amended by the Local Government and Housing Act 1989 Sch 11 para 26).

9 As to the meaning of 'grouped' see PARA 29 note 4.

10 Local Government Act 1972 s 173(6).

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172. Financial loss allowances for community councillors.

Any member of a community council¹ who is not entitled to receive an attendance allowance² for the performance of an approved duty³ is entitled⁴ to receive a payment by way of financial loss allowance, that is to say, a payment not exceeding the prescribed amount⁵ in respect of any loss of earnings necessarily suffered, or any additional expenses (other than expenses on account of travelling or subsistence⁶) necessarily suffered or incurred by him for the purpose of enabling him to perform that duty⁷.

However, a member of a community council is not entitled to any payment in respect of the performance as such a member of an approved duty within the community or, in the case of a community grouped⁸ under a common community council, the area of the group⁹.

1 As to community councils see PARA 41 et seq. Note that although the Local Government Act 1972 s 173 refers to parish or community councils it has been disapplied in relation to the latter: see the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 34(1)(a), (2); and PARA 169 note 3.

2 Ie an attendance allowance under the Local Government Act 1972 s 173(1): see PARA 171.

3 As to the meaning of 'approved duty' see PARA 177.

4 The entitlement is subject to the Local Government Act 1972 s 173(6): see the text and notes 8-9.

5 The amount prescribed is (1) for a period not exceeding 4 hours, £30.05; (2) for a period exceeding 4 hours but not exceeding 24 hours, £60.11; (3) for a period exceeding 24 hours, the aggregate of £60.11 and such amount specified in head (1) or (2) as is appropriate to the number of hours by which the period exceeds 24 hours: Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 6.

6 As to travelling and subsistence allowances see PARAS 183, 199.

7 Local Government Act 1972 s 173(4) (amended by the Local Government and Housing Act 1989 s 194, Sch 11 para 26).

Charter trustees are entitled to financial loss allowances as though they were community councillors in respect of their charter area: Local Government Act 1972 s 246(16). As to charter trustees see PARA 113.

8 As to the meaning of 'grouped' see PARA 29 note 4.

9 Local Government Act 1972 s 173(6).

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173. Right of community councillors to opt for a financial loss allowance.

Where a councillor gives notice in writing to the community council¹ of which he is a member that he wishes to receive a financial loss allowance², he is entitled to receive a financial loss allowance instead of any payment by way of an attendance allowance³ to which he would otherwise be entitled⁴. Where a councillor gives a financial loss allowance notice⁵ to the community council not later than the end of the period of one month beginning with the day of his election⁶ as a member of the council then he is entitled to receive a financial loss allowance for the performance of any approved duty⁷ since his election, whether performed before or after the giving of the notice⁸. Where a councillor gives a financial loss allowance notice to the community council at any other time, then he is entitled to a receive financial loss allowance for the performance of any approved duty after the end of the period of one month beginning with the day on which the notice is given⁹.

Where a councillor who has given a community council a financial loss allowance notice gives the council notice in writing that he withdraws that notice, it does not have effect in relation to any duty performed after the day on which the notice of withdrawal is given¹⁰.

1 As to community councils see PARA 41 et seq. Note that although the Local Government Act 1972 s 173 refers to parish or community councils it has been disapplied in relation to the latter: see the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 34(1)(a), (2); and PARA 169 note 3.

2 As to financial loss allowances for community councillors see PARA 172.

3 As to attendance allowances for community councillors see PARA 171.

4 Local Government Act 1972 s 173A(1) (s 173A added by the Local Government, Planning and Land Act 1980 s 24(2); and the Local Government Act 1972 s 173A(1) amended by the Local Government and Housing Act 1989 s 194, Sch 11 para 26).

Charter trustees are entitled to financial loss allowances as though they were community councillors in respect of their charter area: Local Government Act 1972 s 246(16). As to charter trustees see PARA 113.

5 For these purposes a notice under the Local Government Act 1972 s 173A is referred to as a 'financial loss allowance notice': s 173A(2) (as added: see note 4).

6 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

7 As to the meaning of 'approved duty' see PARA 177.

8 Local Government Act 1972 s 173A(3) (as added (see note 4); and amended by the Local Government and Housing Act 1989 Sch 11 para 26; and the Miscellaneous Financial Provisions Act 1983 s 7).

9 Local Government Act 1972 s 173A(4) (as added (see note 4); substituted by the Miscellaneous Financial Provisions Act 1983 s 7; and amended by the Local Government and Housing Act 1989 Sch 11 para 26).

10 Local Government Act 1972 s 173A(4A) (s 173A as added (see note 4); s 173A(4A) added by the Miscellaneous Financial Provisions Act 1983 s 7; and amended by the Local Government and Housing Act 1989 Sch 11 para 26).

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174. Travel and subsistence allowances.

Members of certain bodies¹ are entitled to receive payments by way of travelling allowance or subsistence allowance, where expenditure on travelling, whether inside or outside the United Kingdom² or, as the case may be, on subsistence is necessarily incurred by the member for the purpose of enabling him to perform any approved duty³ as a member of that body, being payments at rates determined by that body, but not exceeding, in the case of travel or subsistence for the purpose of an approved duty within the United Kingdom, such rates as may be specified by the Secretary of State or the Welsh Ministers⁴.

1 Subject to disapplication (see PARA 169), the bodies to which the Local Government Act 1972 ss 174, s 175 (see PARA 175) apply are: (1) the bodies specified in the Local Government and Housing Act 1989 s 21(1) (see PARA 23), except (a) the Common Council of the City of London; (b) a body established pursuant to an order under the Local Government Act 1985 s 67 (see PARA 17); and (c) without prejudice to the Local Government Act 1972 s 265 (see PARA 36), the Council of the Isles of Scilly; (2) any prescribed body on which a body to which ss 174, 175 apply by virtue of head (1) is represented; and (3) any parish or community council: s 177(1) (substituted by the Local Government and Housing Act 1989 s 194, Sch 11 para 28(2); and amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 3(2), Sch 31). As to the Council of the Isles of Scilly see PARA 36. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

The Local Government Act 1972 s 177(1) (as substituted and amended) has effect without prejudice to regulations made by virtue of: (i) the School Standards and Framework Act 1998 ss 94(5C), 95(3B) (see **EDUCATION** vol 15(1) (2006 Reissue) PARAS 415, 423); (ii) the Education Act 2002 s 52(6) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 562); and (iii) as from a day to be appointed, the Education and Skills Act 2008 s 48(4) (see **EDUCATION**): Local Government Act 1972 s 177(1A) (added by the School Standards and Framework Act 1998 Sch 30 para 3(3); amended by the Education and Inspections Act 2006 Sch 3 para 1, Sch 18 Pt 3; and prospectively amended by the Education and Skills Act 2008 Sch 1 para 42). At the date at which this volume states the law no such day had been appointed.

For these purposes, a member of a committee or sub-committee of a local authority or other body is deemed to be a member of that body: Local Government Act 1972 s 177(3). As to committees and sub-committees see PARA 369 et seq.

2 As to the meaning of 'United Kingdom' see PARA 116 note 18.

3 As to the meaning of 'approved duty' see PARA 177.

4 Local Government Act 1972 s 174(1) (amended by the Local Government, Planning and Land Act 1980 s 25). As to expenses incurred on official and courtesy visits see PARA 176. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the ambit of s 174 see *Grubb v Price Waterhouse Coopers* [2001] LGR 32, [2000] All ER (D) 1105.

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175. Allowances for attendance at conferences and meetings.

Certain local authorities¹ and certain other bodies² may pay any of their members attending any conference or meeting such allowances in the nature of an attendance allowance³ and an allowance for travelling and subsistence⁴, as they think fit⁵. Payments must be of such reasonable amounts as the body in question may determine in a particular case or class of case but are not to exceed⁶:

- 267 (1) in the case of payments of an allowance in the nature of an attendance allowance, such amounts as may be specified in or determined under regulations made by the Secretary of State or the Welsh Ministers⁷; and
- 268 (2) in the case of payments of an allowance in the nature of an allowance for travel and subsistence in respect of a conference or meeting held in the United Kingdom, such amounts as may be specified for the corresponding allowance⁸.

Regulations made by the Secretary of State or the Welsh Ministers may make it a condition of any payment mentioned in head (1) above that, in the financial year to which the payment would relate, the aggregate amount which the body in question has paid or is already liable to pay in respect of any prescribed allowance or allowances does not exceed such maximum amount as may be specified in or determined under the regulations⁹.

1 The Local Government Act 1972 s 175 is subject to disapplication: see PARA 169. As to the meaning of 'local authority' see PARA 23. In relation to a local authority, the Local Government Act 1972 s 175 (see the text and notes 2-9) applies to a conference or meeting held inside or outside the United Kingdom and convened by any person or body, other than a person or body convening it in the course of a trade or business or a body the objects of which are wholly or partly political, for the purpose of discussing matters which in its opinion relate to the interests of its area or any part of it or the interests of the inhabitants of its area or any part of it: s 175(3). As to the meaning of 'United Kingdom' see PARA 116 note 18.

In relation to the London Fire and Emergency Planning Authority, a joint waste authority or any body which is a joint board, joint authority or other combined body all the members of which are representatives of local authorities, s 175 applies to a conference or meeting held and convened as mentioned in s 175(3) for the purpose of discussing matters which in the body's opinion relate to the functions of the body, or to any functions of local authorities in which the body has an interest: s 175(3B) (added by the Local Government, Planning and Land Act 1980 s 25(3); and amended by the Local Government and Housing Act 1989 s 194, Sch 11 para 27; and the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 18; and the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 1, 11). The Local Authority Act 1972 s 175(3B) is modified to have effect as if the New Forest National Park Authority were a combined body all the members of which were representatives of local authorities: see the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421, Sch 13 para 1(1).

As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to joint waste authorities see PARA 51. As to the New Forest National Park Authority see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 32.

In relation to any other body to which the Local Government Act 1972 s 175 applies, s 175 applies to a conference or meeting convened by one or more such bodies or by an association of such bodies: s 175(4). See further note 2.

2 I.e. the bodies to which the Local Government Act 1972 s 175 applies (see PARA 174 note 1) and which have power by virtue of any enactment to send representatives to any conference or meeting to which this provision applies: see s 175(1).

Where such a body has power under any enactment other than the Local Government Act 1972 or any instrument under such an enactment to pay expenses incurred in attending a conference or meeting to which s 175 applies, the amount payable under that enactment or instrument must not exceed the amount which would be payable in respect of attendance under s 175(1): s 175(2).

3 As to attendance allowances for community councillors see PARA 171. As to community councils see PARA 41 et seq.

4 As to travel and subsistence allowances see PARA 174.

5 Local Government Act 1972 s 175(1) (amended by the Local Government and Housing Act 1989 Sch 11 para 27). As to the ambit of the Local Government Act 1972 s 175 see *Grubb v Price Waterhouse Coopers* [2001] LGR 32, [2000] All ER (D) 1105.

Charter trustees are entitled to allowances for attending conferences and meetings as though they were community councillors in respect of their charter area: Local Government Act 1972 s 246(16). As to charter trustees see PARA 113.

6 Local Government Act 1972 s 175(1A) (s 175(1A) added by the Local Government and Housing Act 1989 Sch 11 para 27).

7 Local Government Act 1972 s 175(1A)(a) (as added: see note 6). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

As for community councils any payment of an allowance under the Local Government Act 1972 s 175 in the nature of an attendance allowance must not exceed £32.46 for any period not exceeding 24 hours and for this purpose a period of 24 hours begins at 3 am: Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 10.

8 Local Government Act 1972 s 175(1A)(b) (as added: see note 6). The reference in the text to a corresponding allowance is to a corresponding allowance under s 174: see PARA 174.

9 Local Government Act 1972 s 175(1A) (as added: see note 6).

UPDATE

175 Allowances for attendance at conferences and meetings

NOTE 1--Local Government Act 1972 s 175(3B) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 22.

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176. Allowances for expenses of official and courtesy visits.

Certain local authorities¹ may defray any travelling or other expenses reasonably incurred by or on behalf of any members of the authority in making official and courtesy visits, whether inside or outside the United Kingdom², on behalf of the authority³. A local authority may also defray any expenses incurred in the reception and entertainment by way of official courtesy of distinguished persons visiting the area of the authority and persons representative of or connected with local government or other public services whether inside or outside the United Kingdom and in the supply of information to any such persons⁴.

No payment may be made to a person under any of the above provisions in respect of a matter as regards which a payment has been made to that person pursuant to any provision of an allowance scheme⁵ in relation to a county council or, in Wales, a county borough council⁶.

1 The Local Government Act 1972 s 176 is subject to disapplication: see PARA 169. For the purposes of the Local Government Act 1972 s 176, 'local authority' includes a joint authority, a joint waste authority and the London Fire and Emergency Planning Authority: s 175(3) (added by the Local Government Act 1985 s 84, Sch 14 para 18; amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 19; and the Local Government and Public Involvement in Health Act 2007 Sch 13, paras 1, 12). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**.

2 As to the meaning of 'United Kingdom' see PARA 116 note 18.

3 Local Government Act 1972 s 176(1)(a). In the case of a visit within the United Kingdom, the amount defrayed by an authority under s 176 in respect of the expenses of any member of the authority in making a visit within the United Kingdom must not exceed the payments which he would have been entitled to receive by way of travelling or subsistence allowances under s 174 (see PARA 174) if the making of the visit had been an approved duty: s 176(2). As to the meaning of 'approved duty' see PARA 177.

Charter trustees are entitled to allowances for attending conferences and meetings as though they were community councillors in respect of their charter area: Local Government Act 1972 s 246(16). As to charter trustees see PARA 113. As to community councils see PARA 41 et seq.

4 Local Government Act 1972 s 176(1)(b). See note 3.

5 I.e. a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9): see PARA 194 et seq.

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 22(2).

UPDATE

176 Allowances for expenses of official and courtesy visits

NOTE 1--For 's 175(3)' read 's 176(3)'. Local Government Act 1972 s 176(3) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 23.

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177. Approved duties.

For the purposes of certain allowances¹, 'approved duty' in relation to a member of a body means such duties as may be specified in or determined under regulations made by the Secretary of State or the Welsh Ministers². In relation to community councils³ 'approved duty' means:

- 269 (1) any of the following duties: (a) attendance at a meeting of the authority or of any committee or sub-committee⁴ of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body⁵; (b) attendance at any other meeting the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee⁶ of the authority and one or more other authorities, or a sub-committee of such a joint committee, provided that, where the authority is divided into two or more political groups⁷, it is a meeting to which members of at least two such groups have been invited, or, if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited⁸; (c) attendance at a meeting of any association of authorities of which the authority is a member⁹; (d) attendance at any training or developmental event approved by the authority¹⁰; (e) duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened¹¹; or (f) duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises¹²; and

270 (2) any other duty approved by an authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions¹³, or of any of its committees or sub-committees¹⁴.

Duties in respect of which the member receives remuneration otherwise than as prescribed¹⁵ are not approved duties for these purposes¹⁶.

1 le the allowances mentioned in the Local Government Act 1972 ss 173-176: see PARA 169 et seq.

2 Local Government Act 1972 s 177(2) (substituted by the Local Government and Housing Act 1989 s 194, Sch 11 para 28(3)). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the power to make regulations see PARA 170.

The Local Government Act 1972 s 177(2) applies to charter trustees as though they were community councillors: s 246(16). As to charter trustees see PARA 113.

3 As to community councils see PARA 41 et seq.

4 As to committees and sub-committees see PARA 371 et seq.

5 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(a)(i).

6 As to joint committees see PARA 380.

7 As to assistants to political groups see PARA 432.

8 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(a)(ii).

9 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(a)(iii).

10 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(a)(iv).

11 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(b)(i).

12 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(b)(ii).

13 As to the discharge of functions of authorities see PARA 369 et seq.

14 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, reg 9(1)(c).

15 le duties in respect of which the member receives remuneration otherwise than under the Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895, Pt II (regs 4-6).

16 See the Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, reg 9(2)

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(ii) Authorities in England

A. IN GENERAL

178. Requirement for schemes for allowances.

Each authority¹ had to make a scheme for allowances in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003² on or prior to 31 December 2003³.

Before the beginning of each year⁴, an authority must make a scheme⁵ for the payment of a basic allowance⁶ for that year⁷. The scheme must also make provision for the following allowances if an authority intends to make such payments in respect of that year: (1) special responsibility allowance⁸; (2) dependants' carers' allowance⁹; (3) travelling and subsistence allowance¹⁰; and (4) co-optees' allowance¹¹.

1 The Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, apply to a body of one of the following descriptions: (1) a district council; (2) a county council; (3) a London borough council; (4) the Council of the Isles of Scilly; (5) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 of that Act applies; (6) a joint authority established by the Local Government Act 1985 Pt IV; (7) the London Fire and Emergency Planning authority; (8) the Broads Authority; (9) a national park authority; and (10) a conservation board of an area of outstanding natural beauty: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1). For the purposes of the Local Government and Housing Act 1989 s 18 (see PARA 166), the Broads Authority and a conservation area of outstanding beauty are designated as relevant authorities and any member of an authority listed at (1) to (9) above must be treated as if he were a councillor: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(2).

As to areas and authorities in England see PARA 24 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to areas of outstanding natural beauty see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658 et seq.

2 The Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 17(2) (amended by SI 2003/1692).

4 'Year' means (1) the period beginning on the date of the coming into force of these Regulations and ending on 31 March 2004; and (2) any period of 12 months ending on 31 March in any year after 2004: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 2.

5 The scheme required by the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(1)(a): see PARA 180.

6 As to the meaning of 'basic allowance' see PARA 180.

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(1).

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(2)(a). As to the meaning of 'special responsibility allowance' see PARA 181.

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(2)(b). As to the meaning of 'dependants' carers' allowance' see PARA 182.

10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(2)(c). As to the meaning of 'travelling and subsistence allowance' see PARA 183.

11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(2)(d). As to the meaning of 'co-optees' allowance' see PARA 184.

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179. Amendment and revocation of schemes for allowances.

A scheme¹ may be amended at any time but may in general only be revoked with effect from the beginning of a year².

Where the scheme is revoked, an authority³ must before the revocation takes effect make a further scheme for the period beginning with the date on which the revocation takes effect and ending at the end of the year in question⁴.

A scheme may make provision for an annual adjustment of allowances by reference to such index as may be specified by the authority⁵ and where the only change made to a scheme in any year is that effected by such annual adjustment in accordance with such index the scheme is deemed not to have been amended⁶. Where an amendment is to be made which affects an allowance payable for the year in which the amendment is made, the scheme may provide for the entitlement to such allowance to apply with effect from the beginning of the year in which the amendment is made⁷.

1 le the scheme required under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(1)(a): see PARA 180.

2 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(3).

Where an independent remuneration panel has produced a report under reg 21 (see PARA 186), a district, county or London borough council may, notwithstanding reg 10(3) revoke an allowance scheme at any time once that council has begun to operate: (1) executive arrangements, where they are being operated in place of existing alternative arrangements; (2) alternative arrangements, where they are being operated in place of existing executive arrangements; or (3) different executive arrangements which involve an executive which takes a different form: reg 12. As to independent remuneration panels see PARA 186. As to areas and authorities in England see PARA 24 et seq.

3 As to the meaning of 'authority' see PARA 178 note 1.

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(8).

5 Where an authority has regard to an index for the purpose of annual adjustment of allowances it must not rely on that index for longer than a period of four years before seeking a further recommendation from the independent remuneration panel established in respect of that authority on the application of an index to its scheme: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(5).

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(4).

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(6).

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180. Basic allowance.

An authority¹ must make a scheme² which provides for the payment of a basic allowance in respect of each year to each member of an authority³, and the authority must pay the basic allowance, and any other permitted allowance, only in accordance with such a scheme⁴.

The scheme must specify the amount of entitlement by way of basic allowance in respect of any year to which it relates⁵ and provide that where the term of office of a member begins or ends otherwise than at the beginning or end of a year, his entitlement is to payment of such part of the basic allowance as bears to the whole the same proportion as the number of days during which his term of office as member subsists bears to the number of days in that year⁶.

The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority⁷ the part of the basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority⁸.

1 As to the meaning of 'authority' see PARA 178 note 1.

2 I.e. a scheme made in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(1)(a). The amount of such an allowance must be the same for each such member: reg 4(1)(a).

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(1)(b). As to the other permitted allowances see PARA 181 et seq.

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(2)(a).

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(2)(b).

7 I.e. in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 4(3).

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181. Special responsibility allowance.

A scheme¹ may provide for the payment for each year to which that scheme relates of an allowance ('special responsibility allowance') to such members of the authority² as have such special responsibilities in relation to the authority as are specified in the scheme and are within one or more of the following categories³:

271 (1) acting as leader or deputy leader of a political group⁴ within the authority⁵;

272 (2) acting as a member of an executive where the authority is operating executive arrangements⁶;

273 (3) presiding at meetings of a committee or sub-committee of the authority⁷ or a joint committee of the authority and one or more other authorities, or a sub-committee of such a joint committee⁸;

274 (4) representing the authority at meetings of, or arranged by, any other body⁹;

275 (5) acting as a member of a committee or sub-committee of the authority which meets with exceptional frequency or for exceptionally long periods¹⁰;

276 (6) acting as the spokesman of a political group on a committee or sub-committee of the authority¹¹;

277 (7) acting as a member of an adoption panel¹²;

- 278 (8) acting as a member of any committee or sub-committee that deals with any function arising under any enactment authorising the authority to license or control the carrying on of any activity¹³;
- 279 (9) carrying out such other activities in relation to the discharge of the authority's functions as require of the member an amount of time and effort equal to or greater than would be required of him by any one of the activities mentioned under heads (1) to (8) (whether or not that activity is specified in the scheme)¹⁴.

Any scheme making such provision must specify the amount of each special responsibility allowance, which need not be the same¹⁵. Where members of an authority are divided into at least two political groups¹⁶ and a majority of members of the authority belong to the same political group (the 'controlling group')¹⁷, the scheme must provide that a special responsibility allowance is paid to at least one person, who is not a member of the controlling group, and has special responsibilities as leader or deputy leader of his political group or acts as spokesman of the political group on a committee or sub-committee of the authority¹⁸. The scheme must also provide that where a member does not have throughout the whole of a year any such special responsibilities as entitle him to a special responsibility allowance, his entitlement is to payment of such part of the special responsibility allowance as bears to the whole the same proportion as the number of days during which he has such special responsibilities bears to the number of days in that year¹⁹.

The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority²⁰ the part of the special responsibility allowance payable to him in respect of the responsibility or duties from which he is suspended or partially suspended may be withheld by the authority²¹.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, Pt 2 (regs 4-9): see PARA 180 et seq.

2 As to the meaning of 'authority' see PARA 178 note 1. For the purposes of the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5 authority includes the Association of London Government: see reg 6. 'Association of London Government' means the body known by that name and established on 1 April 2000 as a joint committee by the London borough councils and the Corporation of the City of London: reg 2.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1).

4 'Political group' means a group constituted in accordance with the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553, reg 8: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 2.

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(a).

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(b). The executive arrangements are those within the meaning of the Local Government Act 2000 Pt II (ss 10-48): see PARA 303 et seq.

7 As to committees and sub-committees of the authority see PARA 371.

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(c). As to joint committees see PARA 380.

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(d).

10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(e).

11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(f).

12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(g). As to adoption panels see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 428.

- 13 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(h).
- 14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1)(i).
- 15 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(2)(a).
- 16 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(2)(b)(i).
- 17 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(2)(b)(ii).
- 18 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(2)(b). The special responsibilities referred to in the text are those under reg 5(1)(a), (f): see the text and notes 4-5, 11.
- 19 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(2)(c).
- 20 le in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.
- 21 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(3).

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182. Dependants' carers' allowance.

A scheme¹ may provide for the payment to members of a district, county or London borough council² of a dependants' carers' allowance in respect of such expenses of arranging for the care of their children or dependants as are necessarily incurred in³:

- 280 (1) the attendance at a meeting of the authority or of any committee or sub-committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body⁴;
- 281 (2) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and at least one other local authority⁵, or a sub-committee of such a joint committee, provided that:
 - 15 22. (a) where the authority is divided into two or more political groups⁶ it is a meeting to which members of at least two such groups have been invited⁷; or
 - 23. (b) if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited⁸;
- 16 282 (3) the attendance at a meeting of any association of authorities of which the parish council is a member⁹;
- 283 (4) the attendance at a meeting of the executive or a meeting of any of its committees, where the authority is operating executive arrangements¹⁰;
- 284 (5) the performance of any duty in pursuance of any standing order¹¹ requiring a member or members to be present while tender documents are opened¹²;
- 285 (6) the performance of any duty in connection with the discharge of any function of the authority conferred by or under any enactment, and empowering or requiring the authority to inspect or authorise the inspection of premises¹³;
- 286 (7) the performance of any duty in connection with arrangements made by the authority for the attendance of pupils at any approved school¹⁴; and

287 (8) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees or sub-committees¹⁵.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

2 le an 'authority' for the purposes of Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7, which means an authority of any description specified in Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(a)-(c) (see PARA 178 note 1): Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(2). As to areas and authorities in England see PARA 24 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1).

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(a). As to committees and sub-committees of local authorities see PARA 371 et seq.

5 le within the meaning of the Local Government Act 1972 s 270(1): see PARA 23. As to joint authorities see PARA 47 et seq.

6 As to the meaning of 'political group' see PARA 181 note 4.

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(b)(i).

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(b)(ii).

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(c).

10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(d). As to executive arrangements see PARA 303 et seq.

11 le made under of the Local Government Act 1972 s 135: see PARA 492.

12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(e).

13 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(f).

14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(g). Approved for these purposes means approved for the purposes of the Education Act 1996 s 342: see **EDUCATION** vol 15(2) (2006 Reissue) PARAS 1028-1029.

15 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 7(1)(h).

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183. Travelling and subsistence allowance.

A scheme¹ may provide for the payment to members of an authority² of a travelling and subsistence allowance, including an allowance in respect of travel by bicycle or by any other non-motorised form of transport, undertaken in connection with or relating to such duties as are specified in the scheme and are within one or more of the following categories³:

288 (1) the attendance at a meeting of the authority or of any committee or sub-committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body⁴;

289 (2) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and at least one other local authority⁵, or a sub-committee of such a joint committee, provided that:

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24. (a) where the authority is divided into two or more political groups⁶ it is a meeting to which members of at least two such groups have been invited⁷; or

25. (b) if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited⁸;

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290 (3) the attendance at a meeting of any association of authorities of which the authority is a member⁹;

291 (4) the attendance at a meeting of the executive or a meeting of any of its committees, where the authority is operating executive arrangements¹⁰;

292 (5) the performance of any duty in pursuance of any standing order¹¹ requiring a member or members to be present while tender documents are opened¹²;

293 (6) the performance of any duty in connection with the discharge of any function of the authority conferred by or under any enactment, and empowering or requiring the authority to inspect or authorise the inspection of premises¹³;

294 (7) the performance of any duty in connection with arrangements made by the authority for the attendance of pupils at any approved school¹⁴; and

295 (8) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees or sub-committees¹⁵.

A scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority¹⁶ any travelling and subsistence allowance payable to him in respect of the responsibilities or duties from which he is suspended or partially suspended may be withheld by the authority¹⁷.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

2 A member of a committee or sub-committee of an authority is to be treated as a member of an authority: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg (8)(3)(a). An authority for these purposes means, in addition to those bodies referred to in reg 3(1) (see PARA 178 note 1), the following bodies: a waste disposal authority established under the Local Government Act 1985 s 10 (see PARA 17); and a joint board upon which a body referred to in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(a)-(h) is represented: reg (8)(3)(b).

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1).

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(a). As to committees and sub-committees of local authorities see PARA 371 et seq.

5 le within the meaning of the Local Government Act 1972 s 270(1): see PARA 23. As to joint authorities see PARA 47 et seq.

6 As to the meaning of 'political group' see PARA 181 note 4.

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(b)(i).

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(b)(ii).

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(c).

10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(d). As to executive arrangements see PARA 303 et seq.

- 11 le made under the Local Government Act 1972 s 135: see PARA 492.
- 12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(e).
- 13 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(f).
- 14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(g). 'Approved' for these purposes means approved for the purposes of the Education Act 1996 s 342: see **EDUCATION** vol 15(2) (2006 Reissue) PARAS 1028-1029.
- 15 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(1)(h).
- 16 le in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.
- 17 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 8(2).

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184. Co-optees' allowance.

A scheme¹ may provide for the payment for each year to a person who is not a member of the authority² but who is a member of a committee or sub-committee of an authority of an allowance³ in respect of attendance at conferences and meetings⁴. The scheme must specify the amount of entitlement by way of co-optees' allowance in respect of any year to which it relates⁵ and provide that where the appointment of a member begins or ends otherwise than at the beginning or end of a year, his entitlement is to payment of such part of the co-optees' allowance as bears to the whole the same proportion as the number of days during which his term of office as member subsists bears to the number of days in that year⁶.

A scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority⁷, any co-optees' allowance payable to him in respect of the responsibilities or duties from which he is suspended or partially suspended may be withheld by the authority⁸.

The amount of co-optees' allowance payable to any member who presides at a meeting of an overview and scrutiny committee, where that committee's functions⁹ relate wholly or partly to any education functions which are the responsibility of the authority's executive, must not be less than the minimum amount of any special responsibility allowance¹⁰ payable under that authority's scheme to a person who presides at meetings of any other authority's committees or sub-committees¹¹.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, Pt 2 (regs 4-9): see PARA 180 et seq.

2 As to the meaning of 'authority' see PARA 178 note 1.

3 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(5). As to committees and sub-committees of authorities see PARA 371.

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(1).

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(2)(a).

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(2)(b).

7 le in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(3).

9 le under the Local Government Act 2000 s 21: see PARA 342.

10 As to special responsibility allowances see PARA 181.

11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 9(4).

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B. INDEPENDENT REMUNERATION PANELS

185. Establishment and constitution of an independent remuneration panel.

An independent remuneration panel must be established in respect of each district, county or London borough authority¹ and by one of the following means: (1) by a district, county or a London borough council and must exercise the functions specified² in respect of that authority³; (2) jointly by any district, county or London borough council and must exercise the functions specified in respect of the authorities which established it⁴; or (3) by the Association of London Government⁵ in which case that panel must exercise the functions specified in respect of any London borough councils⁶. There must not be more than one panel which makes recommendations in respect of an authority⁷.

An independent remuneration panel must consist of at least three members none of whom is also a member of a district, county or London borough council in respect of which it makes recommendations or is a member of a committee or sub-committee of such an authority⁸. A person may not be a member of an independent remuneration panel if he is disqualified from being or becoming a member of a district, county or London borough council⁹.

A district, county or London borough council may pay the expenses incurred by an independent remuneration panel established under head (1) or (2) in carrying out its functions and may pay the members of the panel such allowances or expenses as the district, county or London borough council for which it makes recommendations may determine¹⁰. The Association of London Government may pay the expenses incurred by an independent remuneration panel established under head (3) in carrying out its functions and may pay the members of the panel such allowances or expenses as it may determine¹¹.

1 Any reference in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, Pt 4 (regs 18-23) to an authority, unless otherwise specified, is construed as a reference to a body of one of the following descriptions: (1) a district council; (2) a county council; and (3) a London borough council: reg 18. As to areas and authorities in England see PARA 24 et seq.

Any independent remuneration panel established under the Local Authorities (Members' Allowances) (England) Regulations 2001, SI 2001/1280 (repealed) continues in being and constitutes an independent remuneration panel for these purposes as if it had been established under Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 20 (see the text and notes 2-11), although where the composition of such a panel does not comply with the new regulations, the authority or authorities or other body by which it is established must ensure that the panel does so comply on or before 30 November 2003: reg 23.

2 le in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21: see PARA 342.

- 3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 20(1)(a).
- 4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 20(1)(b).
- 5 As to the meaning of 'Association of London Government' see PARA 181 note 2.
- 6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 20(1)(c).
- 7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 20(1).
- 8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 20(2)(a).
- 9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 20(2)(b). As to disqualification see PARA 119 et seq.
- 10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 20(3).
- 11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 20(4).

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186. Recommendations of panels.

An independent remuneration panel¹ must produce a report in relation to the district, county or London borough council in respect of which it was established, making recommendations²: (1) as to the responsibilities or duties in respect of which a special responsibility allowance³, travelling and subsistence allowance⁴, and co-optees' allowance⁵ should be available⁶; (2) as to the amount of such allowances and as to the amount of basic allowance⁷; (3) as to whether a dependants' carers' allowance⁸ should be payable to members of the district, county or London borough council, and as to the amount of such an allowance⁹; (4) as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated¹⁰; (5) as to whether adjustments to the level of allowances may be determined according to an index and if so which index and how long that index should apply, subject to a maximum of four years, before its application is reviewed¹¹; (6) as to which members of an authority are to be entitled to pensions¹²; and (7) as to treating a basic allowance or special responsibility allowance, or both, as amounts in respect of which such pensions are payable¹³.

A copy of a report made by the independent remuneration panel must be sent to each district, county and London borough council in respect of which recommendations have been made¹⁴. An independent remuneration panel may make different recommendations in relation to each of the authorities for which it exercises functions¹⁵.

1 As to the establishment and constitution of independent remuneration panels see PARA 185.

2 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 21(1). As to the duty to have regard to recommendations see PARA 188. As to areas and authorities in England see PARA 24 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(a)(i). As to special responsibility allowances see PARA 181.

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(a)(ii). As to travelling and subsistence allowances see PARA 183.

- 5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(a)(iii). As to co-optees' allowances see PARA 184.
- 6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(a).
- 7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(b). As to the basic allowance see PARA 180.
- 8 As to dependants' carers' allowances see PARA 182.
- 9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 21(1)(c).
- 10 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(d). Payments are backdated in accordance with reg 10(6): see PARA 179.
- 11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(e).
- 12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(f). The entitlement to pensions is under a scheme under the Superannuation Act 1972 s 7: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.
- 13 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(1)(g). Such pensions are payable in accordance with a scheme under the Superannuation Act 1972 s 7: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.
- 14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 21(2).
- 15 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 21(3).

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187. Publicity for recommendations of panels.

Once a district, county or London borough council¹ receives a copy of a report made to it by an independent remuneration panel², it must, as soon as reasonably practicable ensure that copies of that report are available for inspection by members of the public at the principal office of the authority, at all reasonable hours³. It must also publish in one or more newspapers circulating in its area, a notice which⁴: (1) states that it has received recommendations from an independent remuneration panel in respect of its scheme⁵; (2) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in the report in respect of that authority⁶; (3) states that copies of the panel's report are available at the principal office of the authority for inspection by members of the public at such times as may be specified by the authority in the notice⁷; and (4) specifies the address of the principal office of the authority at which such copies are made available⁸.

A district, county or London borough council must supply a copy of a report made by an independent remuneration panel to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine⁹.

1 As to areas and authorities in England see PARA 24 et seq.

2 As to the establishment and constitution of independent remuneration panels see PARA 185. As to reports made by such a panel see PARA 186.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 22(1)(a).

- 4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 22(1)(b).
- 5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 22(1)(b)(i).
- 6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 22(1)(b)(ii).
- 7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 22(1)(b)(iii).
- 8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 22(1)(b)(iv).
- 9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 18, 22(2).

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188. Duty to have regard to recommendations.

A district, county or London borough council¹ must have regard to the recommendations made in relation to it by an independent remuneration panel² before it makes or amends a scheme³.

Before a fire and rescue authority, a joint authority, the London Fire and Emergency Planning authority, the Broads Authority, a national park authority or a conservation board of an area of outstanding natural beauty⁴ makes or amends a scheme it must have regard to the recommendations made by any independent remuneration panels in relation to a district, county or London borough council by which any of its members are nominated⁵.

1 Is an authority under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(a)-(c): see PARA 178. As to areas and authorities in England see PARA 24 et seq.

2 As to the establishment and constitution of independent remuneration panels see PARA 185.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 19(1).

4 Is an authority under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(e)-(j): see PARA 178. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to areas of outstanding natural beauty see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658 et seq.

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 19(2).

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C. ADMINISTRATIVE ARRANGEMENTS FOR ALLOWANCES

189. Claims and payments.

A scheme¹ must specify a time limit from the date on which an entitlement to a dependants' carers' allowance², a travelling and subsistence allowance³ or a co-optees' allowance⁴ arises

during which a claim for such allowances must be made by the person entitled to whom they are payable⁵. This does not, however, prevent an authority⁶ from making a payment where the allowance is not claimed within the specified period⁷. The scheme may provide for payments of allowances to be made at such times as may be specified in it, and different times may be specified for different allowances⁸.

A scheme may provide that where payment of any allowance has already been made in respect of any period during which the member concerned:

- 296 (1) is suspended or partially suspended from his responsibilities or duties as a member of the authority⁹;
- 297 (2) ceases to be a member of the authority¹⁰; or
- 298 (3) is in any other way not entitled to receive the allowance in respect of that period¹¹,

the authority may require that such part of the allowance as relates to any such period be repaid to the authority¹².

A scheme must make provision to ensure that where a member of an authority is also a member of another authority, that member may not receive allowances from more than one authority in respect of the same duties¹³.

1. See a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

2. As to dependants' carers' allowances see PARA 182.

3. As to travelling and subsistence allowances see PARA 183.

4. As to co-optees allowances see PARA 184.

5. See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 14(1).

6. As to the meaning of 'authority' see PARA 178 note 1.

7. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 14(2).

8. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 14(3).

9. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(7)(a). The member is suspended or partially suspended in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.

10. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(7)(b).

11. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(7)(c).

12. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(7).

13. Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 10(9).

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190. Pensions.

A scheme¹ made by a district council, county council or a London borough council² must set out which members of the authority³ are to be entitled to pensions⁴. It must also set out whether the basic allowance⁵, the special responsibility allowance⁶ or both, may be treated as amounts in respect of which such pensions are payable⁷. In making such provision an authority may only include a member who has first been recommended by the independent remuneration panel⁸.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

2 As to areas and authorities in England see PARA 24 et seq.

3 As to the meaning of 'authority' see PARA 178 note 1.

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 11(1)(a). For these purposes entitlement to a pension is in accordance a scheme made under the Superannuation Act 1972 s 7: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.

5 As to the basic allowance see PARA 180.

6 As to special responsibility allowances see PARA 181.

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 11(1)(b).

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 11(2). Independent remuneration panels are established under reg 21: see PARA 185.

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191. Election to forgo allowances.

A scheme¹ must provide that a person may, by notice in writing given to the proper officer² of the authority³, elect to forgo his entitlement or any part of his entitlement to allowances⁴.

1 le a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

2 'Proper officer' must be construed in accordance with the Local Government Act 1972 s 270(3) (see PARA 431): Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 2.

3 As to the meaning of 'authority' see PARA 178 note 1.

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 13.

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192. Records of allowances.

An authority¹ must keep a record of the payments made by it in accordance with a scheme². Such a record must:

- 299 (1) specify the name of the recipient of the payment and the amount and nature of each payment³;
- 300 (2) be available, at all reasonable times, for inspection and at no charge:
- 19
26. (a) where it is kept by a district council, a county council, a London borough council or the Council of the Isles of Scilly⁴ by any local government elector⁵ for the area of that authority⁶; and
27. (b) where it is kept by any other authority⁷, by any local government elector of a district council, a county council, a London borough council or the Council of the Isles of Scilly, in whose area that other authority exercises functions⁸; and
- 20
- 301 (3) be supplied in copy to any person who requests such a copy and who pays to the authority such reasonable fee as it may determine⁹.

As soon as reasonably practicable after the end of a year to which the scheme relates, an authority must make arrangements for the publication within the authority's area of the total sum paid by it in the year under the scheme to each recipient in respect of the basic allowance¹⁰, special responsibility allowance¹¹, dependants' carers' allowance¹², travelling and subsistence allowance¹³, and co-optees' allowance¹⁴.

1 As to the meaning of 'authority' see PARA 178 note 1.

2 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(1). The scheme referred to in the text means a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(2)(a).

4 I.e. an authority specified in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(a)-(d): see PARA 178. As to areas and authorities in England see PARA 24 et seq. As to the Council of the Isles of Scilly see PARA 36.

5 'Local government elector' means a person entitled to vote as an elector at a local government election in accordance with the Representation of the People Act 1983 s 2 (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 112): Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 2.

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(2)(b)(i).

7 I.e. an authority specified in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 3(1)(e)-(j): see PARA 178.

8 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(2)(b)(ii).

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(2)(c).

10 As to the basic allowance see PARA 180.

11 As to special responsibility allowances see PARA 181.

12 As to dependants' carers' allowances see PARA 182.

13 As to travelling and subsistence allowances see PARA 183.

14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(3). As to co-optees' allowances see PARA 184.

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193. Publicity.

An authority¹ must, as soon as reasonably practicable after the making or amendment of a scheme², make arrangements for its publication by³:

- 302 (1) ensuring that copies of the scheme are available for inspection by members of the public at the principal office of the authority, at all reasonable hours⁴; and
 - 303 (2) publishing in one or more newspapers circulating in its area, a notice which⁵:
- 21
28. (a) states that the authority has made or amended a scheme and specifies the period of time for which the scheme has effect⁶;
 29. (b) describes the main features of the scheme and specifies the amounts payable in respect of each allowance mentioned in the scheme⁷;
 30. (c) describes any responsibilities or duties specified in the scheme in relation to special responsibility allowance⁸ and travelling and subsistence allowance⁹;
 31. (d) confirms that in making or amending the scheme, the authority complied with any duty¹⁰ to have regard to the recommendations of an independent remuneration panel¹¹;
 32. (e) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in its report for that authority¹²;
 33. (f) states that copies of the scheme and copies of a record of payments made under the scheme¹³ are available at the principal office of the authority for inspection by members of the public at such times as may be specified by the authority in the notice¹⁴; and
 34. (g) specifies the address of the principal office of the authority at which such copies are made available¹⁵.

22

An authority must supply a copy of the scheme to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine¹⁶.

1 As to the meaning of 'authority' see PARA 178 note 1.

2 I.e. a scheme made under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021: see PARA 178 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1).

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(a).

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b). An authority must ensure that such notice is published in one or more newspapers circulating in its area as soon as possible after the expiration of 12 months after the previous publication of such a notice, irrespective of whether the scheme has been amended during that 12 month period: reg 16(2).

6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(i).

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(ii).

8 I.e. specified in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 5(1): see PARA 181.

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(iii). The text refers to responsibilities specified in accordance with reg 8(1): see PARA 183.

10 There is a duty under the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 19: see PARA 188.

11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(iv).

12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(v).

13 There is a record kept in accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 15(1), (2): see PARA 192.

14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(vi).

15 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(1)(b)(vii).

16 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 16(3).

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(iii) Authorities in Wales

A. COUNTY AND COUNTY BOROUGH COUNCILS

(A) IN GENERAL

194. Requirement for, and amendment and revocation of, schemes for allowances.

An authority¹ must make a scheme in accordance with the Local Authorities (Members' Allowances) (Wales) Regulations 2007² for the payment of allowances in respect of each year³. Such a scheme may be amended or revoked at any time⁴.

When a scheme is revoked, an authority must before the revocation takes effect make a further scheme for the period beginning with the date on which the revocation takes effect⁵.

Where an amendment is to be made which affects an allowance payable for the year in which it is made, the scheme may provide for the entitlement to such allowance to apply with effect from the beginning of the year in which the amendment is made and if the amendment affects basic allowance⁶ or special responsibility allowance⁷ in relation to each of the periods⁸:

- 304 (1) beginning with the first day of the year and ending with the day before that on which the first amendment in that year takes effect⁹; and
- 305 (2) beginning with the day on which an amendment takes effect and ending with the day before that on which the next amendment takes effect, or (if none) with the last day of the year¹⁰,

the entitlement to such an allowance is to payment of such proportion of the amount of the allowance under the scheme as it has effect during the relevant period as the number of days in the period bears to the number of days in the year¹¹.

1 'Authority' means a county council or a county borough council in Wales: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, regs 1(2), 2. As to areas and authorities in Wales see PARA 37 et seq. Authorities are prescribed as relevant authorities for the purposes of the Local Government Act 2000 s 100(1)(b), (c) (see PARA 168): Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 3. Different provision is made for national park authorities (see PARA 211) and fire and rescue services (see PARA 212) in Wales. As to members' allowances for authorities in England see PARA 178 et seq.

2 le the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086.

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 5(1).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(1).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 5(2).

6 As to the basic allowance see PARA 196.

7 As to the special responsibility allowance see PARA 197.

8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2).

9 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2)(a).

10 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2)(b).

11 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2).

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195. Amounts of allowances and annual adjustment.

A scheme for allowances¹ must specify in respect of any year to which it relates:

- 306 (1) the amount or a means to ascertain the amount of the basic allowance²; and
- 307 (2) the amount or a means to ascertain the amount of special responsibility allowance³ and, where different amounts apply to different responsibilities, the amount or means to ascertain the amount applicable to each⁴.

Such a scheme may make provision for an annual adjustment of allowances⁵. However, an annual adjustment to an allowance payable by an authority for any year:

- 308 (a) must not exceed the amount prescribed by the independent remuneration panel for Wales⁶ for that allowance, that authority, and that year, in an annual or a supplementary report⁷; and
- 309 (b) may only be made by reference to an index if the panel has prescribed that such an index be used for that purpose in relation to that allowance, by that authority, and for that year, in an annual or a supplementary report⁸.

In the event that the panel produces a supplementary report which prescribes matters described in head (a) or (b), an authority to which that report applies may, for the year to which the report relates, and in relation to the matters so prescribed, make an adjustment of allowances payable by it for that year, notwithstanding that the authority may have made an

adjustment of allowances⁹ in consequence of an earlier annual report produced by the panel for that year¹⁰.

A scheme may provide that where payment of any allowance has already been made in respect of any period during which the member concerned is suspended or partially suspended from that member's responsibilities or duties¹¹, ceases to be a member¹² of the authority¹³, or is in any other way not entitled to receive the allowance in respect of that period, the authority may require that such part of the allowance as relates to any such period be repaid¹⁴.

An authority may make provision for an annual adjustment of travelling and subsistence¹⁵, and co-optees' allowances¹⁶. However, such an authority's annual adjustment:

- 310 (i) must not exceed the amount prescribed by the panel for that allowance, that authority, and that year, in an annual or a supplementary report¹⁷;
- 311 (ii) may only be made by reference to an index if the panel has prescribed that such an index be used for that purpose in relation to that allowance, by that authority and for that year, in an annual or supplementary report¹⁸.

In the event that the panel produces a supplementary report which prescribes matters described in head (i) or (ii), an authority to which that report applies may, for the year to which the supplementary report relates, and in relation to the matters so prescribed, make an adjustment of allowances payable by it for that year, notwithstanding that the authority may have made an adjustment of allowances¹⁹ in consequence of an earlier annual report produced by the panel for that year²⁰.

An authority may provide that where payment of a travelling and subsistence allowance or a co-optee's allowance has already been made in respect of any period during which the member concerned is suspended or partially suspended from that member's responsibilities or duties²¹, ceases to be a member of the authority²², or is in any other way not entitled to receive the allowance in respect of that period²³, the authority may require that such part of the allowance as relates to any such period be repaid²⁴.

1 I.e a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).

2 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 10(a). As to basic allowances see PARA 196.

3 As to the special responsibility allowance see PARA 197.

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 10(b).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(1).

6 As to the establishment and constitution of the Independent Remuneration Panel for Wales see PARA 201.

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(2)(a). Annual reports are produced in pursuance of reg 35, and supplementary reports in pursuance of reg 36: see PARA 204.

8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(2)(b).

9 I.e under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(1): see the text to note 5.

10 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(3).

11 I.e as a member of the authority in accordance with the Local Government Act 2000 Pt III (ss 49-83), or regulations made under that Part: see PARA 232 et seq.

12 As to the meaning of 'authority' see PARA 194 note 1.

13 'Member' includes, in respect of the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pts 2 (regs 4-9) and 5 (regs 22-25) and unless otherwise expressly stated, includes a co-opted member and a member of a committee or sub-committee: reg 2.

14 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12(4).

15 See PARA 199.

16 See the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 20(1). As to co-optees' allowances see PARA 200.

17 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 20(2)(a).

18 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 20(2)(b).

19 le under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086. reg 20(1): see the text and note 16.

20 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 20(3).

21 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 21(a).

22 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 21(b).

23 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 21(c).

24 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 21.

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196. Basic allowances.

A scheme for allowances¹ must provide for the payment for each year to which the scheme relates of a basic allowance to each member of the authority² who is a councillor and the amount of such allowance must be the same for each such member³.

The amount of entitlement in respect of each member of an authority who is a councillor by way of basic allowance must not exceed the amount prescribed by the panel for that authority⁴ in the initial report⁵ or a supplementary report, the relevant provisions of which for the time being apply⁶.

A scheme must provide that, where the term of office of a member⁷ begins or ends otherwise than at the beginning or end of a year, the entitlement of that member is to be to payment of such proportion of the basic allowance as the number of days during which the member's term of office as a councillor subsists during that year bears to the number of days in that year⁸.

Where a scheme is amended⁹ and the term of office of a member who is a councillor does not subsist throughout the whole of the relevant period¹⁰ the scheme must provide that the entitlement of any such member under this regulation is to payment of such proportion of the basic allowance applicable to each such period as represents the number of days the member's term in office subsists in that period as a proportion of the number of days in the period¹¹.

A scheme must also: (1) provide that no more than one basic allowance is payable to a member of an authority¹²; and (2) specify that where a member is suspended or partially suspended from his responsibilities or duties¹³ the part of basic allowance payable to that member in respect of the responsibilities or duties from which that member is suspended or partially suspended must be withheld by the authority¹⁴.

- 1 le a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).
- 2 As to the meaning of 'authority' see PARA 194 note 1.
- 3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(1).
- 4 Subject to the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, regs 11, 12(1)-(3): see PARA 195.
- 5 le the report in pursuance of the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(1)(b)(i): see PARA 204.
- 6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(2).
- 7 The term of office of a member of an authority who is a councillor begins on the date on which that member makes a declaration of acceptance of that office under the Local Government Act 1972 s 83(1) (see PARA 143): Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 4.
- 8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(3).
- 9 le as mentioned in the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2): see PARA 194.
- 10 le a period mentioned in the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 6(2)(a), (b): see PARA 194.
- 11 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(4).
- 12 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(5).
- 13 le his responsibilities or duties as a member of the authority in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.
- 14 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 7(6).

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197. Special responsibility allowances.

A scheme for allowances¹ may provide for the payment for each year to which the scheme relates of a special responsibility allowance to such members of the authority² who are councillors as have such special responsibilities in relation to that authority as are prescribed by the remuneration panel for that authority³ in the initial report⁴, or any supplementary report⁵, and specified in the scheme⁶.

A special responsibility allowance may not be paid to more than 50 per cent of the members of the authority⁷. The amount of entitlement in respect of a special responsibility by way of special responsibility allowance payable by an authority must not exceed the amount prescribed by the panel⁸. An authority must not pay more than one special responsibility allowance to a member who is a councillor of that authority⁹.

1 le a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).

- 2 As to the meaning of 'authority' see PARA 194 note 1.
- 3 'Panel' means the independent remuneration panel for Wales established under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 6 (regs 26-39) (see PARA 201 et seq): reg 2.
- 4 'Initial report' means the report produced by the panel in accordance with Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34: see PARA 204.
- 5 'Supplementary report' means a report produced by the panel in accordance with Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 36: see PARA 204.
- 6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 8(1). Provision is also made to ensure that special responsibility licences are proportionate to the length of time a member has special responsibilities: see reg 8(5), (6).
- 7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 8(2). 50% of the members is calculated using the total number of seats on the authority and by rounding up the number of members to the next whole number when in calculating the percentage the number is not a whole number: reg 8(2).
- 8 See the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 8(3).
- 9 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 8(4).

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198. Care allowances.

A scheme for allowances¹ may provide for the payment to a member of the authority² who is a councillor of a care allowance in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of that member's duties as a member³.

Such a scheme must not provide for the payment of:

- 312 (1) a care allowance in respect of any child over the age of 15 years or dependant unless the member satisfies the authority that the child or dependant required supervision which has caused the member to incur expenses that were necessary in respect of the care of that child or dependant in the carrying out of that member's duties as a member⁴;
- 313 (2) a care allowance to more than one member of the authority in relation to the care of the same child or dependant⁵; or
- 314 (3) more than one care allowance to any member of the authority who is unable to demonstrate to the reasonable satisfaction of the authority that the member has to make separate arrangements for the care of different children or dependants⁶.

The amount of entitlement by way of care allowance must not exceed the amount prescribed by the independent remuneration panel for Wales⁷.

1 ie a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).

2 As to the meaning of 'authority' see PARA 194 note 1.

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 9(1). Provision is also made for the withholding of a care allowance where a member is suspended or partially suspended from his duties and responsibilities: see reg 9(4).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 9(2)(a).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 9(2)(b).

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 9(2)(c).

7 See the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 9(3). As to the meaning of 'panel' see PARA 197 note 3.

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199. Travelling and subsistence allowance.

A member is entitled to receive payments by way of travelling and subsistence allowances at rates determined each year by the authority¹ where expenditure on travel or subsistence is necessarily incurred by that member in the performance of an approved duty as a member of the authority².

The rates of travel and subsistence allowances determined for a year by an authority must not exceed the rates for travelling and subsistence allowances prescribed by the independent remuneration panel for Wales³.

1 As to the meaning of 'authority' see PARA 194 note 1.

2 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 15(1). Provision is also made for the withholding of travelling and subsistence allowances where a member is suspended or partially suspended from his duties and responsibilities: see reg 15(3).

3 See the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 15(2). This restriction is subject to reg 20: see PARA 195. As to the meaning of 'panel' see PARA 197 note 3.

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200. Co-optees' allowance.

An authority¹ may provide for the payment of an allowance for each year to a co-opted member² who has such responsibilities or duties in respect of attendance at conferences or meetings as are prescribed by the independent remuneration panel for Wales³.

The amount of entitlement in respect of a co-opted member by way of co-optees' allowance must not exceed the amount prescribed by the panel for that authority⁴. However, subject to this restriction, an authority may amend the amount of entitlement of co-optees' allowance for a year at any time in that year⁵.

1 As to the meaning of 'authority' see PARA 194 note 1.

2 'Co-opted member' means in relation to an authority a person who is not a member of the authority but who is a member of any committee or sub-committee of the authority, or is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 2.

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 16(1). Provision is also made for the co-optees' allowance to be proportionate, and to be withheld where a member is suspended or partially suspended: see reg 16(5), (6). As to the meaning of 'panel' see PARA 197 note 3.

4 See the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 16(2).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 16(3). Where an authority makes such an amendment, whether in pursuance of reg 20 (see PARA 195) or otherwise, that authority may provide for the amount as amended to apply with effect from the beginning of the year in which the amendment is made: reg 16(4).

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(B) THE INDEPENDENT REMUNERATION BOARD FOR WALES

201. Establishment and constitution of the independent remuneration panel for Wales.

The Welsh Ministers¹ must appoint a permanent panel known as the independent remuneration panel for Wales².

The panel must consist of a chairperson³, a vice-chairperson, together with three other members⁴. A person appointed as a member of the panel must hold and vacate office in accordance with the terms of the instrument appointing that person to that office as determined by the Welsh Ministers⁵. No person may be appointed as a member of the panel for a period exceeding four years⁶ although a person who ceases to be a member of the panel is eligible for re-appointment⁷.

A member appointed to fill a casual vacancy is to serve in that office until the date upon which the term of office of the person in whose place that member is elected would have expired⁸.

1 As to the Welsh Ministers see PARA 97.

2 Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086, reg 26.

3 The Welsh Ministers must appoint one member of the panel as the chairperson: Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086, reg 27(2).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 27(1). The following persons are disqualified, and may not be members of the panel: (1) a member of the National Assembly for Wales, the House of Commons, the House of Lords, the European Parliament, an authority, a town or community council; or (2) a person who is disqualified from being or becoming a member of an authority other than as an officer in the employment of an authority: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 27(3), (4).

A chairperson or vice-chairperson is to hold such office until that person's term of office as member comes to an end: reg 29(6).

- 5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 28(1).
- 6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 28(2).
- 7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 28(3).
- 8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 28(4).

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202. Meetings of the panel.

The independent remuneration panel for Wales¹ must meet at least once a year². At the first meeting of the panel, or where a casual vacancy occurs in the office of vice-chairperson, the members of the panel must elect one of their number (other than the chairperson) to be vice-chairperson of the panel³.

The chairperson is to preside at meetings of the panel⁴, but where he is absent the vice-chairperson is to preside⁵. The members of the panel may regulate their own procedure⁶.

A question to be decided by the panel must be decided by a majority of the votes cast by the members present at the meeting and voting thereon⁷. In the case of an equality of votes, the person presiding at the meeting of the panel is to have a second or casting vote⁸.

The quorum of the panel is three and must include the chairperson or the vice-chairperson⁹.

1 As to the establishment and constitution of the panel see PARA 201.

2 Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086, reg 29(1). The first meeting must be held within the period of six weeks beginning with the date of the instruments appointing persons as members of the panel (or such later date as the Welsh Ministers may agree): reg 29(2).

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 29(3).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 29(4).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 29(5). As to the chairperson and vice-chairperson's term of office see PARA 201 note 4.

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 29(7). This power is subject to any provision that the Local Authorities (Allowances for Members) (Wales) Regulations 2007, SI 2007/1086, may otherwise make: reg 29(7).

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 30(1).

8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 30(2).

9 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 31.

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203. Administration.

The Welsh Ministers¹ must pay the expenses incurred by the independent remuneration panel for Wales² in carrying out its functions and may pay the members of the panel such allowances or expenses as it may determine³. The Welsh Ministers must also make available to the panel appropriate administrative support⁴.

The panel may, in the performance of its functions seek information or advice from any body or person⁵.

1 As to the Welsh Ministers see PARA 97.

2 As to the establishment and constitution of the panel see PARA 201.

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 32(1).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 32(2).

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 33.

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204. Reports.

The independent remuneration panel for Wales¹ must produce an initial report² which prescribes in relation to each authority³ the responsibilities or duties in respect of which special responsibility allowance⁴ and co-optees' allowance⁵ may be payable⁶. It must also prescribe the maximum amounts payable by way of basic allowance⁷, special responsibility allowance, care allowance⁸, travelling allowance⁹, subsistence allowance¹⁰ and co-optees' allowance¹¹.

The panel may prescribe different maximum amounts in relation to different authorities, and in relation to special responsibility allowance and co-optees' allowance, prescribe different maximum amounts for different responsibilities or duties¹².

In producing the initial report, the panel must consider any representation received from an authority in respect of the exercise of the panel's functions¹³.

Thereafter the panel must produce an annual report¹⁴ which prescribes in relation to each authority the maximum annual adjustment that may be made by that authority in relation to the following year to the basic allowance, special responsibility allowance, care allowance, travelling allowance, subsistence allowance and co-optees' allowance¹⁵. Further, the report must prescribe an index by reference to which one or more of the allowances may be adjusted annually by that authority in relation to the following year¹⁶.

In producing an annual report, the panel must take account of any supplementary report produced by the panel prior to that annual report which prescribes matters which for the time being apply to any authority¹⁷. It must also consider any representation received from an authority in respect of the exercise of the panel's functions¹⁸.

The panel may at any time after the production of the initial report, and from time to time thereafter, produce a supplementary report which prescribes in relation to one or more authorities any of the matters that may be prescribed by the panel¹⁹. In determining whether to

produce a supplementary report and, if having determined to do so, in producing a supplementary report, the panel must consider any representation received from an authority in respect of the exercise of the panel's functions²⁰.

- 1 As to the establishment and constitution of the panel see PARA 201.
- 2 The panel must produce the initial report before 31 July 2008 (or such later date as the Welsh Ministers may agree): Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(4).
- 3 As to the meaning of 'authority' see PARA 194 note 1.
- 4 As to the special responsibility allowance see PARA 197.
- 5 As to the co-optees' allowance see PARA 200.
- 6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(1)(a).
- 7 As to the basic allowance see PARA 196.
- 8 As to the care allowance see PARA 198.
- 9 See PARA 199.
- 10 See PARA 199.
- 11 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(1)(b).
- 12 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(2).
- 13 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 34(3).
- 14 Each annual report must be produced by the panel by 31 December in the year prior to the year to which that report relates: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 35(4). The first annual report must be produced by the panel during the financial year ending on 31 March 2010 and in any event before 31 December 2009 (or such later date as the National Assembly for Wales may agree): reg 35(5).
- 15 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 35(1)(a). The panel may prescribe different maximum annual adjustments for different authorities: reg 35(2)(a).
- 16 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 35(1)(b). The panel may prescribe different indices for different authorities: reg 35(2)(b).
- 17 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 35(3)(a).
- 18 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 35(3)(b).
- 19 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 36(1).
- 20 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 36(2).

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205. Publicity for panel reports.

As soon as reasonably practicable after the panel has produced an initial, annual or supplementary report¹ it must forward that report to the Welsh Ministers².

As soon as practicable after the Welsh Ministers receive an initial or annual report produced by the panel, they must send a copy of that report to every authority³, national park authority⁴ and fire and rescue authority⁵.

As soon as practicable after the Welsh Ministers receive a supplementary report produced by the panel, they must send a copy of the report to the authority to which that report relates, any national park authority within whose area that authority lies and the fire and rescue authority within whose area that authority lies⁶.

The Welsh Ministers must:

- 315 (1) publish the details of an initial, annual or supplementary report in one or more newspapers circulating throughout Wales⁷;
- 316 (2) where the report received is the initial report or an annual report, include in the publication a statement that copies of the report will be available at the principal offices of the authorities to members of the public at such times as may be specified by those authorities⁸;
- 317 (3) where the report received is a supplementary report, include in the publication a statement⁹: (a) that copies of that report will be available to members of the public at the principal offices of the authority or authorities to which the report relates at such times as may be specified by those authorities¹⁰; and (b) specifying the authority or authorities to which the report relates¹¹.

Each authority must ensure that as soon as reasonably practicable after receiving an initial, annual or supplementary report of the panel copies are available for inspection by members of the public at the principal office of the authority at such reasonable times as the authority may specify¹². In addition, the authority must ensure a copy is supplied to any person who requests it and who pays the authority such reasonable fee as the authority may determine¹³.

1 As to reports see PARA 204.

2 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(1). As to the Welsh Ministers see PARA 97.

3 As to the meaning of 'authority' see PARA 194 note 1.

4 'National park authority' means a national park authority established under the Environment Act 1995 s 63 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq): Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 2.

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(2). 'Fire and rescue authority' means a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2, or a scheme to which s 4 of that Act applies: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 2. See further **FIRE SERVICES**.

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(3).

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(4)(a).

8 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(4)(b).

9 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(4)(c).

10 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(4)(c)(i).

11 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(4)(c)(ii).

12 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(5)(a).

13 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 39(5)(b).

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(C) ADMINISTRATIVE ARRANGEMENTS FOR ALLOWANCES

206. Claims and time limits.

A scheme for allowances¹ may provide for payments of allowances to be made at such times as may be specified in it, and different times may be specified for different allowances².

An authority³ must specify a time limit from the date on which an entitlement to travelling or subsistence allowances⁴ arises during which a claim for those allowances must be made by the person to whom those allowances are payable⁵. Any such claim (excluding claims for travel by means of a private motor vehicle) must be accompanied by appropriate receipts proving actual expenses, subject to any requirement or limitation that an authority may determine⁶.

A claim for a payment by way of travelling allowance or subsistence allowance must include, or be accompanied by, a statement signed by the member that the member has not made and will not make any other claim in respect of the matter to which the claim relates⁷.

Any payment by way of travelling allowance or subsistence allowance to a member of an appeal panel constituted by a local education authority⁸ must be paid by the authority which maintains the school or schools in relation to which the appeal panel is constituted⁹.

1 Ie a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).

2 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 14.

3 As to the meaning of 'authority' see PARA 194 note 1.

4 As to travelling and subsistence allowances see PARA 200.

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 18(1). Nothing in reg 18(1) prevents an authority from making a payment where the allowance is not claimed within the period so specified: reg 18(3).

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 18(2).

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 22(1).

8 Ie in accordance with regulations under the School Standards and Frameworks Act 1998 s 94: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 415.

9 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 23.

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207. Pensions.

An authority¹ may determine which members of the authority are entitled to pensions in accordance with the Local Government Pension Scheme Regulations². An authority may provide in respect of those members that basic allowances³ and special responsibility allowances⁴ are treated as amounts in respect of which pensions are payable⁵. In making any determination an authority must only do so in respect of a member who has been recommended by the independent remuneration panel for Wales⁶ as eligible for such entitlement⁷.

1 As to the meaning of 'authority' see PARA 194 note 1.

2 Local Authorities (Allowances to Members) (Wales) Regulations 2007, SI 2007/86, reg 38(1)(a). As to the Local Government Pension Scheme Regulations currently in force see PARA 448.

3 As to the basic allowance see PARA 196.

4 As to the special responsibility allowance see PARA 197.

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 38(1)(b).

6 As to the establishment and constitution of the panel see PARA 201

7 Local Authorities (Allowances to Members) (Wales) Regulations 2007, SI 2007/ 1086, reg 38(2). The panel may make recommendations as to which members of an authority are to be entitled to pensions in accordance with the Local Government Pension Scheme Regulations: Local Authorities (Allowances to Members) (Wales) Regulations 2007, SI 2007/1086, reg 37(1). In exercising this function the panel may make different recommendations in relation to each authority in respect of which it exercises those functions: reg 37(2). Such recommendations may form part of a report produced by the panel in pursuance of reg 34 or 36 (see PARA 204): reg 37(3).

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208. Election to forgo allowances.

A scheme for allowances¹ must provide that a member may, by notice in writing to the proper officer² of the authority³, elect to forgo any part of his entitlement to an allowance under the scheme⁴.

A member may, by notice in writing given to the proper officer of the authority, elect to forgo his entitlement (or any part of it) to travelling and subsistence allowances⁵. A co-opted member⁶ may, by notice in writing given to the proper officer of the authority, elect to forgo his entitlement (or any part of it) to co-optees' allowance⁷.

1 Ie a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).

2 As to the meaning of 'proper officer' see PARA 431; definition applied by the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 2.

3 As to the meaning of 'authority' see PARA 194 note 1.

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 13.

5 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 17(1). As to travelling and subsistence allowances see PARA 199.

6 As to the meaning of 'co-opted member' see PARA 200 note 2.

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 17(2). As to co-optees' allowances see PARA 200.

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209. Records of allowances.

An authority¹ must keep a record of the allowance payments² made by it³.

Such record must specify the name of the recipient and the amount and nature of each payment⁴, and must be available, at all reasonable times, for inspection (free of charge) by any local government elector⁵ for the area of the authority⁶.

A person who is entitled to inspect a record may make a copy of any part of it upon payment of such reasonable fee as may be required by the authority⁷.

1 As to the meaning of 'authority' see PARA 194 note 1.

2 In accordance with the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, or any scheme made pursuant to them.

3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 24(1).

4 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 24(2)(a).

5 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 24(2)(b).

6 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 24(2)(b).

7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 24(2).

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210. Publicity.

An authority¹ must, as soon as practicable after the making or amendment of any scheme for allowances², make arrangements for its publication within the authority's area³. As soon as practicable after the end of a year to which a scheme relates, an authority must make arrangements for the publication within the authority's area of the total sum paid by it in that year under the scheme to each member⁴ who is a councillor in respect of each of a basic allowance⁵, special responsibility allowance⁶, and care allowance⁷.

As soon as practicable after the end of a year, an authority must make arrangements for the publication within the authority's area of the total sum paid by it in that year to each member in respect of a travelling allowance⁸, subsistence allowance⁹, and co-optees' allowance¹⁰.

- 1 As to the meaning of 'authority' see PARA 194 note 1.
- 2 Ie a scheme under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, Pt 2 (regs 4-9).
- 3 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 25(1).
- 4 As to the meaning of 'member' see PARA 195 note 13.
- 5 As to the basic allowance see PARA 196.
- 6 As to the special responsibility allowance see PARA 197.
- 7 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 25(2). As to care allowances see PARA 198.
- 8 See PARA 199.
- 9 See PARA 199.
- 10 Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 25(3). As to co-optees' allowances see PARA 200.

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B. NATIONAL PARK AUTHORITIES

211. National park authorities.

A national park authority in Wales¹ must make a scheme in accordance with regulations² in respect of each year for the payment of allowances³.

The scheme must provide for the payment of a basic allowance⁴, special responsibility allowances⁵, attendance allowances⁶, care allowances⁷ and financial loss allowances⁸.

A member of a national park authority in Wales is also entitled to travel and subsistence allowances⁹, and a co-optee's allowance¹⁰. A national park authority may also reimburse to a member who is also a councillor any monies expended in respect of expenses for arranging for the care of children or dependants as are necessarily incurred in the carrying out of that member's duties as a member¹¹.

Provision is also made with regard to administrative arrangements for the allowances noted above¹².

1 As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 Ie in accordance with the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, which are revoked by SI 2007/1086 except in relation to national park authorities in Wales and the Local Authorities (Members' Allowances) Regulations 1991, SI 1991/351.

3 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 5 (as partially revoked: see note 2). Such schemes may be amended or revoked: see reg 6 (as so partially revoked). However, before doing so a national park authority must have regard to the matters prescribed in any report produced by the independent remuneration panel for Wales: see reg 12B (added by SI 2007/1086). As to reports produced by the panel see PARA 204. Provision is also made with regard to the amount of allowances, election to forgo payment, claims and

payments: see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, Pt III (regs 12, 12A, 12B, 13-14) (as partially revoked: see note 2).

4 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 7 (as partially revoked (see note 2); and amended by SI 2007/1086).

5 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 8 (as partially revoked (see note 2); and amended by SI 2007/1086).

6 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 9 (as partially revoked (see note 2); and amended by SI 2007/1086).

7 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 10 (as partially revoked (see note 2); and amended by SI 2007/1086).

8 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 11 (as partially revoked (see note 2); and amended by SI 2007/1086).

9 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, regs 15, 15A (as partially revoked (see note 2); reg 15 amended, and reg 15A added by SI 2007/1086). Before a national park authority determines the rates of allowance for travel and subsistence allowances, it must have regard to the matters prescribed in any report produced by the independent remuneration panel for Wales, in so far as those matters relate to travel and subsistence allowances, which for the time being apply in relation to any county council or county borough council by which any member of the national park authority who is a councillor is nominated: see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 15(2) (substituted by SI 2007/1089).

10 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, regs 15B, 15C (added by SI 2007/1086). In determining the responsibilities or duties in respect of which co-optees' allowance may be payable, a national park authority must have regard to the matters prescribed in any report produced by the independent remuneration panel for Wales in so far as those matters relate to the responsibilities or duties in respect of which co-optees' allowance may be payable, which for the time being apply to any county council or county borough council by which any member of the national park authority who is a councillor is nominated: see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 15B(2) (added by SI 2007/1089). The amount of co-optees' allowance payable to a co-opted member by a national park authority for a year must not exceed the amount which equals the average of all (if any) co-optees' allowance payable in that year by any county council or county borough council by which any member of that national park authority who is a councillor is nominated: see the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, reg 15B(3) (substituted by SI 2007/1089). As to co-optees' allowances payable by a county or county borough council see PARA 200.

11 See the Local Authorities (Allowances for Members of County and County Borough Councils and National Park Authorities) (Wales) Regulations 2002, SI 2002/1895, Pt V (regs 16-19) (partially revoked: see note 2).

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C. FIRE AUTHORITIES

212. Fire authorities.

A fire authority in Wales¹ must make a scheme in accordance with regulations² in respect of each year for the payment of allowances and pay such allowances in accordance with such a scheme³. The scheme must provide for the payment of a fire authority allowance to each member of the fire authority⁴ and a fire authority chairperson's and vice-chairperson's allowance⁵.

A fire authority may also make provision for the payment of a care allowance⁶, and a co-optee's allowance⁷. A member is also entitled to receive payments by way of travel allowance or subsistence allowance at rates determined for each year by the fire authority where expenditure on travel or subsistence is necessarily incurred by that member in the performance of an approved duty as a member⁸. Provision is made for the recovery of payments of allowances in respect of any period where the member, or co-opted member, is suspended, ceases to be a member or is not entitled to the allowance⁹.

Provision is also made with regard to administrative arrangements for the allowances noted above¹⁰.

1 A fire authority means a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 of that Act applies: Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 2 (definition added by SI 2005/2929). See further **FIRE SERVICES**.

2 See the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555.

3 See Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 5. Such schemes may be amended or revoked: see reg 6 (amended by SI 2007/1086). The scheme may provide for payments of allowances to be made at such times as may be specified in it, and different times may be specified for different allowances: Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086, reg 12. Provision is also made with regard to the amount of allowances, and their recovery: regs 9-11.

4 Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 7. The amount of the fire authority allowance must be the same for each member: reg 7(1).

5 Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 8.

6 See the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 13 (amended by SI 2007/1086). A care allowance is made in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of that member's duties as a member: Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 13(1). A fire authority may provide in respect of the year ending 31 March 2006 and subsequent years, for an annual adjustment of care allowance: reg 14.

7 See the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 15A (added by SI 2007/1086). A fire authority may amend the amount of co-optees' allowance payable for a year at any time in that year: Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/255, reg 15B (added by SI 2007/1086). In determining the responsibilities or duties in respect of which co-optees' allowance may be payable, a fire authority must have regard to the matters prescribed in any report produced by the independent remuneration panel for Wales in so far as those matters relate to the responsibilities or duties in respect of which co-optees' allowance may be payable, which for the time being apply to any of that fire authority's constituent authorities: see the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 15A(2) (added by SI 2007/1089). The amount of co-optees' allowance payable to a co-opted member by a fire authority for a year must not exceed the amount payable in that year by those authorities under the Local Authorities (Members' Allowances) (Wales) Regulations 2007, SI 2007/1086 (see PARA 194 et seq): see the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 15A(3) (substituted by SI 2007/1089).

8 Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/2555, reg 15.

9 See the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/255, reg 16 (amended by SI 2007/1086).

10 See the Local Authorities (Allowances for Members of Fire Authorities) (Wales) Regulations 2004, SI 2004/255 Pt 5 (regs 17-20) (regs 17, 19 amended by SI 2007/1086).

UPDATE

212 Fire authorities

NOTES 7, 9--References to SI 2004/255 should be to SI 2004/2555.

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(iv) Parish Councils

213. Parish basic allowance.

A parish council may pay a parish basic allowance¹ for each year to its chairman² only or to each of its members³. The amount of the allowance payable to its chairman may differ from that payable to each other member of the parish council, but otherwise that amount must be the same for each such member⁴.

Where a parish council proposes to pay parish basic allowance, whether to its chairman only or to each of its members, it must have regard, in setting the level or levels of such allowances, to the recommendations which have been made in respect of it by a parish remuneration panel⁵.

Where a parish council proposes to pay a parish basic allowance in any year to its members and the term of office of any member begins or ends otherwise than at the beginning or end of a year, that member's entitlement is to payment of such part of the parish basic allowance as bears to the whole the same proportion as the number of days during which his term of office subsists bears to the number of days in that year⁶.

If the term of office of the chairman as chairman begins or ends otherwise than at the beginning or end of a year, his entitlement for the period during which he holds the office of chairman is to payment of such part of the parish basic allowance to which he is entitled as chairman as bears to the whole the same proportion as the number of days during which his term of office as chairman subsists bears to the number of days in that year⁷.

The part of the parish basic allowance payable to a member in respect of the period for which he is suspended or partially suspended⁸ may be withheld by the parish council⁹.

A parish council must, as soon as reasonably practical after setting the levels at which any parish basic allowance is to be paid and to whom, arrange for the publication in a conspicuous place or places in the area of the authority, for a period of at least 14 days, of a notice or notices containing the relevant information¹⁰.

A parish council may require that where payment of the parish basic allowance has already been made in respect of any period during which the member concerned is suspended or partially suspended from his responsibilities or duties as a member or ceases to be a member or is in any other way not entitled to receive the allowance in respect of that period, such part of the allowance as relates to any such period must be repaid to the council¹¹.

- 1 A parish council may not make any payment, and a member is not entitled to receive any payment in respect of any period prior to 31 December 2003 if payment is made, in respect of any duties carried out by the member during that same period, under any of the provisions referred to in the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 34(1): regs 24(a), 25(9) (reg 25(9) amended by SI 2003/1692).
- 2 As to the chairman of a parish council see PARA 145.
- 3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(1). For the purposes of reg 25 'member' means an elected member of a parish council: reg 25(10) (added by SI 2004/2596).
- 4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 25(1).
- 5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(2). The recommendations must be made in accordance with reg 28: see PARA 217.
- 6 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(3).
- 7 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 25(4).
- 8 In accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.
- 9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(5).
- 10 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(6). The notice must contain the following information: (1) any recommendation in respect of a parish basic allowance made by the parish remuneration panel; (2) the level or levels at which the authority has decided to pay a parish basic allowance and to which members it is to be paid; and (3) a statement that in reaching the decision on the matters referred to in head (2) above the authority has had regard to the recommendation of the parish remuneration panel: reg 25(6)(a)-(c). A parish council must ensure that it keeps a copy of that information available for inspection by members of the public on reasonable notice: reg 25(7).
- 11 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 25(8).

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MEMBERS OF LOCAL AUTHORITIES/(4) ALLOWANCES AND PAYMENTS/(iv) Parish Councils/214.
Parish travelling and subsistence allowance.

214. Parish travelling and subsistence allowance.

A parish council¹ may pay to its members² a parish travelling and subsistence allowance³ undertaken or incurred in connection with the performance of any duty within one or more of the following categories⁴:

- 318 (1) the attendance at a meeting of the parish council or of any committee or sub-committee, or of any other body to which the parish council makes appointments or nominations, or of any committee or sub-committee of such a body⁵;
- 319 (2) the attendance at a meeting of any association of authorities of which the parish council is a member⁶;
- 320 (3) the performance of any duty in pursuance of any standing order⁷ requiring a member or members to be present while tender documents are opened⁸;
- 321 (4) the performance of any duty in connection with the discharge of any function of the parish council conferred by or under any enactment and empowering or requiring them to inspect or authorise the inspection of premises⁹; and

- 322 (5) the carrying out of any other duty approved by the parish council, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of its functions or of any of its committees or sub-committees¹⁰.

Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority¹¹, any parish travelling and subsistence allowance payable to him may be withheld by the parish council¹². A parish council may require that where payment has already been made in respect of any period during which the member has been suspended or partially suspended, ceased to be a member of the authority or is in any other way not entitled to receive the allowance, such part of the allowance as relates to any such period must be repaid to the council¹³.

1 As to parish councils see PARA 27 et seq.

2 'Member' for these purposes means a member of a parish council, whether or not elected to such office: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 24(b).

3 This includes an allowance in respect of travel by bicycle or by any other non-motorised form of transport: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 26(1).

4 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1).

5 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1)(a).

6 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1)(b).

7 Ie a standing order made under made under the Local Government Act 1972 s 135: see PARA 492.

8 Se the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1)(c).

9 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1)(d).

10 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(1)(e).

11 Ie in accordance with the Local Government Act 2000 Pt III (ss 49-83) or regulations made under that Part: see PARA 232 et seq.

12 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 26(2).

13 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 26(3).

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215. Election to forgo parish allowances.

A member¹ may, by notice in writing given to the proper officer of the parish council², elect to forgo his entitlement or any part of his entitlement to allowances³.

1 As to the meaning of 'member' see PARA 214 note 2.

2 As to the meaning of 'proper officer' see PARA 191 note 2. As to parish councils see PARA 27 et seq.

3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 32.

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MEMBERS OF LOCAL AUTHORITIES/(4) ALLOWANCES AND PAYMENTS/(iv) Parish Councils/216.
Parish remuneration panels.

216. Parish remuneration panels.

A parish remuneration panel may be established by a responsible authority¹ and make recommendations in respect of the parish councils² for which it is, as the establishing authority³, the responsible authority⁴. It may also be established jointly by responsible authorities and make recommendations in respect of the authorities for which the establishing authorities are the responsible authorities⁵.

A parish remuneration panel consists of those persons who are also members of the independent remuneration panel⁶ which exercises functions in respect of the establishing authority or authorities⁷. It must not include, however, any member⁸ who is also a member of a parish council in respect of which it makes recommendations or is a member of a committee or sub-committee of such a parish council⁹.

1 For these purposes 'responsible authority' means, in relation to a parish council, the district or unitary county council: (1) where the parish council is the council for one parish, in whose area the parish council is situated; or (2) where the parish council is the council for a group of parishes, in whose area all the parishes in the group are situated or, where that is not the case, in whose area the greatest number of local government electors for the parishes in the group is situated: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 24(c). As to district or unitary county councils see PARA 24.

2 Those parish councils must each pay to the parish remuneration panel an equal share of the amount of the expenses incurred by that panel in carrying out that panel's functions: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 27(4). As to parish councils see PARA 27 et seq.

3 An establishing authority is the responsible authority that established the parish remuneration panel: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 24(d).

4 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 27(1)(a). As to the recommendations of a parish council see PARA 217.

5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 27(1)(b).

6 As to the independent remuneration panel see PARA 185.

7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 27(2).

8 As to the meaning of 'member' see PARA 214 note 2.

9 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 27(3).

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MEMBERS OF LOCAL AUTHORITIES/(4) ALLOWANCES AND PAYMENTS/(iv) Parish Councils/217.
Recommendations of parish remuneration panels.

217. Recommendations of parish remuneration panels.

A parish remuneration panel¹ must produce a report in relation to the members² of the parish councils³ in respect of which it was established, making recommendations⁴ as to⁵:

- 323 (1) the amount of parish basic allowance payable to elected members⁶ of such parish councils⁷;
- 324 (2) the amount of travelling and subsistence allowance payable to members of such parish councils⁸;
- 325 (3) whether parish basic allowance should be payable only to the chairman of any such parish council or to all of its elected members⁹;
- 326 (4) whether, if parish basic allowance should be payable to both the chairman and the other elected members of any such parish council, the allowance payable to the chairman should be set at a level higher than that payable to the other elected members and, if so, the higher amount so payable¹⁰; and
- 327 (5) the responsibilities or duties in respect of which members should receive parish travelling and subsistence allowance¹¹.

A copy of the report must be sent to each parish council in respect of which recommendations have been made¹².

In making its recommendations, a parish remuneration panel may either apply the same recommended levels of parish basic allowance and parish travelling and subsistence allowance to all the parish councils in respect of which it was established¹³ or make different recommendations for different parish councils¹⁴.

A parish remuneration panel must express its recommendation as to the level of parish basic allowance as a percentage¹⁵ of the sum that an independent remuneration panel¹⁶ has recommended as the level of basic allowance¹⁷ for the establishing authority¹⁸ which is the responsible authority¹⁹ for that parish or parishes²⁰. It must also express its recommendation as to the level of parish basic allowance as a monetary sum being a monetary sum equivalent to that percentage figure²¹.

1 As to parish remuneration panels see PARA 216.

2 As to the meaning of 'member' see PARA 214 note 2.

3 As to parish councils see PARA 27 et seq.

4 In accordance with Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 29: see notes 13-21.

5 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(1).

6 For these purposes a reference to a member in relation to payments of parish basic allowance is a reference to an elected member of the council: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 28(3) (added by SI 2004/2596).

7 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(1)(a), (3). As to the parish basic allowance see PARA 213.

8 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(1)(b). As to the travelling and subsistence allowance see PARA 214.

9 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(1)(c). See also note 6. As to the chairman see PARA 145.

10 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(1)(d). See also note 6.

11 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 28(1)(e).

- 12 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 28(2).
- 13 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 29(1)(a).
- 14 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 29(1)(b).
- 15 The percentage may be 100%: Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 29(3).
- 16 For independent remuneration panels see PARA 185.
- 17 As to basic allowances see PARA 216.
- 18 As to the meaning of 'establishing authority' see PARA 216 note 3.
- 19 As to the meaning of 'responsible authority' see PARA 216 note 1.
- 20 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 29(2).
- 21 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 29(4).

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218. Publicity.

Once a parish council receives a copy of a report made to it by a parish remuneration panel¹ it must, as soon as reasonably practicable²:

- 328 (1) ensure that copies of that report are available for inspection by members of the public on reasonable notice³; and
 - 329 (2) arrange for the publication in a conspicuous place or places in the area of the parish council, for a period of at least 14 days, of a notice which⁴:
- 23
35. (a) states that it has received recommendations from a parish remuneration panel in respect of allowances⁵;
 36. (b) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in the report in respect of that parish council⁶; and
 37. (c) states that copies of the panel's report are available for inspection on reasonable notice and gives details of the manner in which notice should be given of an intention to inspect the report⁷.
- 24

A parish council must supply a copy of a report made by a parish remuneration panel to any person who requests a copy and who pays to the authority such reasonable fee as the parish council may determine⁸.

1 As to parish remuneration panels see PARA 216.

2 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 30(1). As to reports made by a parish remuneration panel see reg 28; and PARA 217.

- 3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 30(1)(a).
- 4 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 30(1)(b).
- 5 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 30(1)(b)(i).
- 6 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 30(1)(b)(ii).
- 7 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 30(1)(b)(iii).
- 8 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 30(2).

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219. Records.

A parish council must keep a record of the payments made by it in respect of parish basic allowances¹ and parish travelling and subsistence allowances². Such a record must: (1) specify the name of the recipient and the amount and nature of each payment³; (2) be available for inspection on reasonable notice and at no charge, by any local government elector for the area of that parish council⁴; and (3) be supplied in copy to any person who is entitled to inspect a record and who requests a copy and pays to the parish council such reasonable fee as it may determine⁵. As soon as reasonably practicable after the end of a year, a parish council must arrange for the publication, for a period of at least 14 days, of a notice in a conspicuous place or places in its area stating the total sum paid by it in the year to each member⁶ in respect of both the parish basic allowance and the parish travelling and subsistence allowance⁷.

- 1 As to parish basic allowances see PARA 213.
- 2 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 31(1). As to parish travelling and subsistence allowances see PARA 214.
- 3 Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, reg 31(2)(a).
- 4 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 31(2)(b). As to the meaning of 'local government elector' see PARA 192 note 5.
- 5 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 31(2)(c).
- 6 As to the meaning of 'member' see PARA 214 note 2.
- 7 See the Local Authorities (Members' Allowances) (England) Regulations 2003, SI 2003/1021, regs 24(a), 31(3).

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(v) Community Councils

220. Community councils.

Allowances in respect of community councils are governed by the Local Authorities (Allowances for Members of Community Council) (Wales) Regulations 2003¹, considered elsewhere in this title².

1 Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003, SI 2003/895.

2 See PARAS 171-177.

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(5) RIGHTS AND LIABILITIES

(i) Miscellaneous Rights of Members

221. Access to information and meetings.

Any member of an authority is entitled by virtue of his office to have access to all written material in the possession of the local authority of which he is a member, provided he has good reason for such access¹. In addition any document which is in the possession or under the control of a principal council and contains material relating to any business to be transacted at a meeting of the council or a committee or sub-committee of the council must be open to inspection by any member of the council².

If the public are entitled to attend meetings, members of the local authority may also attend. Otherwise a member's right of access to meetings, whether of council committees or sub-committees, like his right of access to documents, depended on whether he has a 'need to know' in order to carry out properly his duties as a councillor³.

A member is also entitled to the same rights as the public under the Freedom of Information Act 2000⁴.

1 *R v Birmingham City Council ex p O* [1983] 1 AC 578, [1983] 1 All ER 497 and *R v Barnes Borough Council ex p Conlon* [1938] 3 All ER 226. A councillor has no right to a roving commission to go and examine books or documents of a corporation, mere curiosity or desire to see and inspect documents is not sufficient: *R v Southwold Corporation ex p Wrightson* (1907) 97 LT 431. See also PARA 539.

2 Local Government Act 1972 s 100F(1) (added by the Local Government (Access to Information) Act 1985 s 1(1); amended by SI 2006/88; SI 2007/969). See further PARA 666.

3 *R v Hackney London Borough Council, ex p Gamper* [1985] 3 All ER 275, [1985] 1 WLR 1229. There is no logical distinction between access to documents and attendance at meetings: *R v Hackney London Borough Council, ex p Gamper* [1985] 3 All ER 275, [1985] 1 WLR 1229. As to admission to meetings and access to information see PARA 641 et seq.

4 See PARA 551; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(5) RIGHTS AND LIABILITIES/(i) Miscellaneous Rights of Members/222. Discrimination.

222. Discrimination.

In addition to the general obligations of a local authority¹, as a public authority, not to discriminate in carrying out its functions², it is specifically provided to be unlawful for an authority to discriminate³ against a disabled person who is a member of the authority⁴. An authority is prohibited from subjecting a disabled person who is a member of the authority to harassment in connection with his carrying out of official business⁵.

It is the duty of an authority to take such steps as are reasonable, in all the circumstances of the case, for it to have to take in order to prevent a provision, criterion or practice, or feature, placing a disabled person who is a member of the authority at a substantial disadvantage, compared to other members who are not disabled persons, in connection with his carrying out of official business⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 As to discrimination in relation to goods, services and facilities see the Disability Discrimination Act 1995 s 20; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582.

3 As to discrimination see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 530, 558.

4 See the Disability Discrimination Act 1995 s 15B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 558.

5 See the Disability Discrimination Act 1995 s 15B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 558.

6 See the Disability Discrimination Act 1995 s 15C; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 559.

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223. Overview and scrutiny committees.

Executive arrangements by a local authority must include provision which enables:

- 330 (1) any member of an overview and scrutiny committee of a local authority¹ to refer to the committee any matter which is relevant to the functions of the committee²; and
- 331 (2) any member of the authority to refer to an overview and scrutiny committee of the authority of which he is not a member any local government matter which is relevant to the functions of the committee³.

1 As to overview and scrutiny committees see the Local Government Act 2000 s 21 and PARA 342.

2 See the Local Government Act 2000 s 21A(1)(a); and PARA 351. This equally applies to members of a sub-committee of the overview and scrutiny committee: Local Government Act 2000 s 21A(1)(b) (added by the Local Government and Public Involvement in Health Act 2007 s 119).

3 See the Local Government Act 2000 s 21A(1)(c); and PARA 351.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(5) RIGHTS AND LIABILITIES/(i) Miscellaneous Rights of Members/224. Insurance of members and voluntary assistants against accidents.

224. Insurance of members and voluntary assistants against accidents.

A local authority¹ may enter into a contract of accident insurance² against risks of any member of the authority³ meeting with a personal accident, whether fatal or not, while engaged on the business of the authority⁴. Any sum received by the authority under such a contract must, after the deduction of any expenses incurred in its recovery, be paid to, or to the personal representatives of, the member of the authority in respect of an accident to whom that sum is received⁵.

A local authority⁶ may enter into a contract of insurance of a relevant class⁷ against risks of any voluntary assistant⁸ of the authority meeting with a personal accident, whether fatal or not, while engaged as such, or suffering from any disease or sickness, whether fatal or not, as the result of being so engaged⁹. Any sum received under a contract of insurance¹⁰ must, after deduction of any expenses incurred in its recovery, be paid by the authority receiving it to, or to the personal representatives of, the voluntary assistant who suffered the accident, disease or sickness in respect of which the sum is received, or to such other person as the authority considers appropriate having regard to the circumstances of the case¹¹. A sum paid to any person other than the assistant or his personal representatives must be applied by that person in accordance with any directions given by the authority for the benefit of any dependant of the voluntary assistant¹².

1 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

2 See **INSURANCE**. References to accident insurance must be read with the Financial Services and Markets Act 2000 s 22 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84), any relevant order under s 22 and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84); Local Government Act 1972 s 140(3A) (added by SI 2001/3649). The provisions of the Life Assurance Act 1774 (see **INSURANCE** vol 25 (2003 Reissue) PARA 535 et seq) do not apply to such a contract: Local Government Act 1972 s 140(3) (amended by the Local Government (Miscellaneous Provisions) Act 1982 ss 39(1), Sch 7 Pt XVI).

3 For these purposes, 'member of the authority' includes a member of a committee or sub-committee of the authority who is not a member of that authority: Local Government Act 1972 s 140(4) (amended by the London Regional Transport Act 1984 s 71(3)(b), Sch 7). As to committees and sub-committees see PARA 371 et seq.

4 Local Government Act 1972 s 140(1) (substituted by the Local Government (Miscellaneous Provisions) Act 1982 s 39(1); and amended by the Insurance Companies Act 1982 s 99(2), Sch 5 para 13; SI 2001/3649).

5 Local Government Act 1972 s 140(2).

6 For these purposes, 'local authority' includes: (1) a board constituted in pursuance of the Town and Country Planning Act 1990 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq); (2) the Common Council of the City of London; and (3) the Council of the Isles of Scilly: Local Government Act 1972 s 140A(2) (s 140A added by the Local Government (Miscellaneous Provisions) Act 1982 s 39(2); and definition amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 28(2); and the Environment Act 1995 s 120, Sch 24). As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. In their application by virtue of the Local Authority Act 1972 s 146A(1) (see PARA 462) to a police authority established under the Police Act 1996 s 3 or the Metropolitan Police Authority, the Local Government Act 1972 ss 140A, 140C have effect subject to modifications: see s 146A(1B), (1C) (s 146A added by the Local Government Act 1985 Sch 14 para 16; s 146A(1B), (1C) added by the Police (Insurance of Voluntary Assistants) Act 1997 s 1(3); and amended by the Greater London Authority Act 1999 Sch 27 para 28(4), (5)).

7 The relevant classes of contracts of insurance are contracts of permanent health insurance and contracts of accident insurance: Local Government Act 1972 s 140C(1) (s 140C added by the Local Government (Miscellaneous Provisions) Act 1982 s 39(2); amended by SI 2001/3649). This must be read with the Financial

Services and Markets Act 2000 s 22, any relevant order under s 22 and Sch 2: Local Government Act 1972 s 140C(1A) (added by SI 2001/3649). See **INSURANCE** vol 25 (2003 Reissue) PARA 21.

8 For these purposes, 'voluntary assistant' means a person who, at the request of the local authority or an authorised officer of the local authority, performs any service or does anything otherwise than for payment by the local authority, except by way of reimbursement of expenses for the purposes of, or in connection with, the carrying out of any of the functions of the local authority: Local Government Act 1972 s 140A(2) (as added: see note 6).

9 Local Government Act 1972 s 140A(1) (as added: see note 6).

10 In a contract made by virtue of the Local Government Act 1972 s 140A: see the text and notes 6-9. The provisions of the Life Assurance Act 1774 (see **INSURANCE** vol 25 (2003 Reissue) PARA 535 et seq) do not apply to any such contract: Local Government Act 1972 s 140C(3) (as added: see note 7).

11 Local Government Act 1972 s 140C(2) (as added: see note 7).

12 Local Government Act 1972 s 140C(2) (as added: see note 7). Section 119 (payments due to deceased officers) (see PARA 446) applies to any sum which is due by virtue of s 140C(2) and does not exceed the amount for the time being specified in s 119(1): s 140C(4) (as so added).

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225. Insurance of voluntary assistants of probation committees.

In relation to England, a county council may enter into a contract of insurance of a relevant class against risks of any voluntary assistant of a relevant probation committee¹ meeting with a personal accident, whether fatal or not, while engaged as such, or suffering from any disease or sickness, whether fatal or not, as the result of being so engaged².

In relation to Wales, a principal council may enter into a contract of insurance of a relevant class against risks of any voluntary assistant of a relevant probation committee meeting with a personal accident, whether fatal or not, while engaged as such, or suffering from any disease or sickness, whether fatal or not, as the result of being so engaged³.

1 For this purpose 'relevant probation committee' means (1) in relation to a county council or a principal council, a probation committee for a probation area wholly or partly within the county; and (2) in relation to Greater London, a probation committee for a probation area wholly or partly within an outer London borough (within the meaning of the London Government Act 1963 s 1) and 'voluntary assistant' means a person who, at the request of an authorised officer of the probation committee, performs any service or does anything otherwise than for payment by the committee (except by way of reimbursement of expenses), for the purposes of, or in connection with, the carrying out of any of the functions of the committee: Local Government Act 1972 s 140B(2) (s 140B added by the Local Government (Miscellaneous Provisions) Act 1982 s 39(2)). In relation to Wales heading (1) above has effect as if it referred to a principal council and to the area of the principal council: see the Local Government Act 1972 s 140B(3) (added by the Local Government (Wales) Act 1994 Sch 15 para 31).

2 Local Government Act 1972 s 104B(1) (amended by the Local Government Act 1985 Sch 17).

3 Local Government Act 1972 s 104B(3) (as added: see note 1).

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(ii) Liability and Protection from Liability

226. Personal liability of members.

Under the general law, a member may incur personal liability in connection with activities as a member, such as for defamation¹ or breach of trust², though it is not clear to what extent this will be so in respect of the corporate activity of an authority as opposed to the member's personal conduct³. Such liability may accordingly arise separately from or in addition to any liability of the member's authority⁴. A member's conduct may furthermore be prohibited by the criminal law and subject to prosecution⁵.

¹ See eg *Horrocks v Rowe* [1975] AC 135, [1974] 1 All ER 662, HL, in respect of proceedings in a council meeting.

² See eg *Westminster City Council v Porter* [2002] EWHC 1589 (Ch), [2002] EWHC 2179 (Ch); [2003] Ch 436, in respect of a claim for recovery of the local authority's losses arising from the defendant's involvement in the unlawful sale of housing stock.

³ In *Harman v Tappenden* (1801) 1 East 555, considerable doubts were expressed about the civil liability of members, and it was held that no action lay in the absence of malice. The question of individual liability was ultimately left open in *Mill v Hawker* (1875) LR 10 Exch 92, though the majority of the Court of Exchequer earlier held ((1874) LR 9 Exch 309) that members of a highways board could be liable in trespass in respect of an *ultra vires* act they had directed should be taken. In *R v Poplar Metropolitan Borough Council, ex p Metropolitan Asylums Board (No 2)* [1922] 1 KB 95, CA, writs of attachment were upheld against individual members for deliberate breach of an order of *mandamus* requiring the authority to pay a proportion of the county rate and (if necessary) to levy a rate for that purpose; but in *Pride of Derby and Derbyshire Angling Association v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA, Denning LJ left open whether individual members could be committed for breach of an injunction granted against the local authority.

⁴ Giving rise to questions of protection and indemnification of members, as to which see PARAS 227 and 228.

⁵ Including the offence of misconduct in a public office and offences involving corruption: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 536.

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227. Protection of members from personal liability.

No matter or thing done, and no contract entered into by any local authority¹, joint board² or port health authority³, and no matter or thing done by any member⁴ or officer of such an authority, or other person whomsoever acting under direction of such authority, if the matter or thing were done or the contract were entered into bona fide⁵ for the purpose of executing the Public Health Act 1875, any public general or any local Act⁶, subjects them or any of them personally to any action, liability, claim or demand whatsoever⁷. Any expense incurred by any such authority, member, officer or other person so acting is borne and repaid out of the applicable fund⁸.

¹ For these purposes, 'local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), an authority established under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) and the London Fire and Emergency Planning Authority, a parish council or a community council: Local Government (Miscellaneous Provisions) Act 1976 s 44(1) (definition substituted by

the Local Government Act 1985 s 84, Sch 14 para 53; and amended by s 102, Sch 17; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 18; the Police Act 1996 s 103, Sch 7 para 1(2)(k); the Police Act 1997 s 88, Sch 6 para 13; the Greater London Authority Act 1999 ss 325, 328, 423, Sch 27 para 41, Sch 29 Pt I para 24(a), (b), Sch 34 Pt VIII; the Local Government Reorganisation (Miscellaneous Provisions) Order 1990, SI 1990/1765, art 4(5); the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 1(7); the Criminal Justice and Police Act 2001 Sch 6 para 35, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 33(a)). As to the meaning of 'local authority' in general see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq. As to joint authorities see PARA 47 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 217.

2 As to joint boards see PARA 10.

3 The statute refers to port sanitary authorities but these are now known as port health authorities. As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

4 A person who is appointed as a member of a committee of a local authority or a joint committee of two or more local authorities by virtue of the Local Government Act 1972 s 102(3) or s 102(4) (see PARA 371) is, if he is not a member of the authority which appointed him, treated as such a member for the purposes of the Public Health Act 1875 s 265 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 105); Local Government (Miscellaneous Provisions) Act 1976 s 39(2). As to joint committees see PARA 380.

5 The true view of this provision may be that one must read 'and without negligence' after 'bona fide': *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596.

6 For these purposes, 'local Act' includes a provisional order confirmed by an Act: Local Government (Miscellaneous Provisions) Act 1976 s 44(1).

7 See the Public Health Act 1875 s 265; and the Local Government (Miscellaneous Provisions) Act 1976 s 39(1) (amended by the Local Government Finance Act 1982 s 38, Sch 6 Pt IV) and the Local Government (Miscellaneous Provisions) Act 1976 s 44(1). These provisions do not protect the authority or its members or officers from liability for negligent acts: *Burgoine v Waltham Forest London Borough Council* (1996) 95 LGR 520; *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596; and see note 5. See also *Arthy v Coleman* (1857) 30 LTOS 101; *Southampton and Itchen Floating Bridge and Roads Co v Southampton Local Board of Health* (1858) 28 LJQB 41. See also Slaughterhouses Act 1974 Pt 1; Combined Fire Authorities (Protection from Personal Liability) (England) Order 1997, SI 1997/2819; Combined Fire Authorities (Protection from Personal Liability) (Wales) Order 1997, SI 1997/2818. As to the liability of public authorities generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 6 et seq.

8 See the Public Health Act 1875 s 265 (amended by the Environment Act 1995 s 63, Sch 7 para 15(d)); and the Local Government (Miscellaneous Provisions) Act 1976 s 39(1)). However, nothing in these provisions exempts any member of any such authority from liability to make any payment in pursuance of the Audit Commission Act 1998 s 17 (see PARA 772) or s 18 (repealed): see the Public Health Act 1875 s 265 (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 1); and the Local Government (Miscellaneous Provisions) Act 1976 s 39(1) (see note 7).

UPDATE

227 Protection of members from personal liability

NOTE 1--Definition of 'local authority' in Local Government (Miscellaneous Provisions) Act 1976 s 44(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 43.

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(iii) Indemnification

228. Power of indemnification.

The Secretary of State¹ may by order make provision for or in connection with conferring power on relevant authorities² in England and police authorities in Wales³ to provide indemnities to some or all of their members⁴ and officers⁵; and the Welsh Ministers⁶ may by order make provision for or in connection with conferring power on relevant authorities in Wales, other than police authorities, to provide indemnities to some or all of their members and officers⁷. An order under this provision may apply to all relevant authorities⁸ or to any particular description of relevant authority⁹. Before making an order under this provision, the Secretary of State or, as the case may be, the Welsh Ministers must consult such representatives of relevant authorities¹⁰, such representatives of employees of relevant authorities¹¹, and such other persons¹² as he or they consider appropriate¹³.

1 As to the Secretary of State see PARA 96.

2 As to the meaning of 'relevant authority' see PARA 232 note 4 (definition applied by the Local Government Act 2000 s 101(5)).

3 For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 ss 83(1), 101(5).

4 For these purposes, 'member' in relation to a relevant authority includes: (1) a member of any committee or sub-committee of the authority; or (2) a person who is a member of, and represents the authority on, any joint committee or sub-committee: Local Government Act 2000 s 101(5). As to committees and sub-committees generally see PARA 371 et seq.

5 Local Government Act 2000 s 101(1).

6 As to the Welsh Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Local Government Act 2000 s 101(2).

8 Local Government Act 2000 s 101(3)(a).

9 Local Government Act 2000 s 101(3)(b).

10 Local Government Act 2000 s 101(4)(a).

11 Local Government Act 2000 s 101(4)(b).

12 Local Government Act 2000 s 101(4)(c).

13 Local Government Act 2000 s 101(4).

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229. Regulations.

A relevant authority¹ may provide indemnities to any of their members or officers in relation to any action of, or failure to act by, the member or officer in question which is authorised by the authority, or forms part of, or arises from, any powers conferred, or duties placed, on that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function he does so in his capacity as a member or officer

of the authority) at the request of, or with the approval of the authority, or for the purposes of the authority².

In place of, or in addition to, themselves providing such an indemnity any relevant authority may, in the same cases provide an indemnity by securing³ the insurance of any of its members or officers⁴.

No indemnity may be provided in relation to any action by, or failure to act by, any member or officer which constitutes a criminal offence or is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer⁵. Further, an indemnity may not be provided in relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him⁶.

Notwithstanding any limitation on the powers of the authority which grants an indemnity, the authority may provide an indemnity to the extent that the member or officer in question:

- 332 (1) believed that the action, or failure to act, in question was within the powers of the authority⁷; or
- 333 (2) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true⁸,

and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act⁹.

An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within his powers at the time at which he acted¹⁰.

The terms of any indemnity given, including any insurance secured, may be such as the authority in question agrees¹¹. Where any indemnity given to any member or officer, including any insurance secured for that member or officer, has effect in relation to the defence of any criminal proceedings or any Part 3 proceedings¹²:

- 334 (a) in relation to England, the indemnity must be provided, and any insurance secured, on the terms that in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and in the case of Part 3 proceedings:
 - 25 38. (i) if a finding is made in those proceedings that the member in question has failed to comply with the code of conduct and that finding is not overturned following any appeal¹³; or
 - 39. (ii) if the member admits that he has failed to comply with the code of conduct¹⁴,
 - 26 335 that member or officer must reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance¹⁵;
 - 336 (b) in relation to Wales, the indemnity is to be provided, and any insurance secured, on the terms that, in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, that member or officer must reimburse the relevant authority or the insurer, as the case may be, for any sums expended by

- the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance¹⁶;
- 337 (c) in relation to Wales, the indemnity is to be provided and any insurance secured, on the terms that in the case of Part III proceedings, where:
- 27
40. (i) a finding is made in those proceedings that the member in question has failed to comply with the code of conduct and that finding is not overturned following any appeal¹⁷; or
41. (ii) there is an admission by the member of that member's failure to comply with the code of conduct¹⁸; and
42. (iii) disciplinary measures are taken against the member in question as a consequence of the failure to comply with the code of conduct¹⁹,
- 28
- 338 that member must reimburse the relevant authority or the insurer (as the case may be) for any sums expended by the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance²⁰;
- 339 (d) in relation to Wales, the indemnity is to be provided, and any insurance secured, on the terms that in the case of Part III proceedings, where:
- 29
43. (i) a finding is made in those proceedings that the member in question has failed to comply with the code of conduct and that finding is not overturned following any appeal²¹; or
44. (ii) there is an admission by the member of that member's failure to comply with the code of conduct²²; and
45. (iii) the member in question is censured or no disciplinary measures are taken against that member as a consequence of the failure to comply with the code of conduct²³,
- 30
- 340 the standards committee of that member's relevant authority may determine that the member must reimburse the relevant authority or the insurer (as the case may be) for any sums expended by the relevant authority or insurer in relation to those proceedings pursuant to the indemnity or insurance²⁴.

Where a member or officer is obliged to reimburse an authority or insurer pursuant to those terms the sums are recoverable by the authority or insurer (as the case may be) as a civil debt²⁵.

1 As to the meaning of 'relevant authority', in relation to England, see PARA 232 note 4; (definition applied by the Local Government Act 2000 s 101(5)), and in relation to Wales, 'relevant authority' means a county council, county borough council, community council, a fire authority constituted by a combination scheme under the Fire and Rescue Services Act 1947, a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies and a National Park authority established under the Environment Act 1995 s 63 (Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 2).

2 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, arts 3, 5; Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, arts 3, 5.

3 'Secure', in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance: Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 1(3); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 2.

4 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 4; Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 4.

5 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 6(1); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 6(1). Notwithstanding,

an indemnity may be provided, in relation to, subject to terms of indemnity or insurance (see the text and notes 11-25) the defence of any criminal proceedings brought against the officer or member and any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence: Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 6(2); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 6(2).

6 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 6(3); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 6(3).

7 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 7(1)(a); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 7(1)(a).

8 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 7(1)(b); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 7(1)(b).

9 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 7(1); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 7(1).

10 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 7(2); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 7(2).

11 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(1); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(1). This is subject to the text and notes 12-24: Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(1); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(1).

12 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(2); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(2). 'Part 3 proceedings' means any investigation, report, reference, adjudication or any other proceeding pursuant to the Local Government Act 2000 Pt 3: Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 1(3); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 2.

13 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(3)(a).

14 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(3)(b).

15 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(3).

16 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(3).

17 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(4)(a).

18 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(4)(b).

19 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(4)(c).

20 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(4).

21 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(5)(a).

22 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(5)(b).

23 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(5)(c).

24 Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(5).

25 Local Authorities (Indemnities for Members and Officers) Order 2004, SI 2004/3082, art 8(4); Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, SI 2006/249, art 8(6).

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(6) CONDUCT OF MEMBERS

(i) In general

230. The regulation of conduct.

The Local Government Act 2000¹ provides for the Secretary of State or the Welsh Ministers to specify by order a model code governing the conduct of members². The model code of conduct must be adopted by local authorities³, and members and co-opted members of the authorities must undertake to observe the code of conduct in the performance of their functions⁴. The conduct of local government employees is dealt with elsewhere in this title⁵. Where an action by or on behalf of an authority causes injustice to a member of the public, the matter will fall to be considered under the provisions relating to maladministration⁶.

The previous structure governing the conduct of members was found principally in the Local Government and Housing Act 1989⁷, enabling the Secretary of State⁸ to issue a National Code of Local Government Conduct⁹, together with provisions in the Local Government Act 1972 restricting members' entitlement to participate in decisions because of pecuniary interests¹⁰. On adoption or application of a code of conduct under the Local Government Act 2000 virtually all the former provisions governing a member's conduct are disapplied¹¹.

1 I.e. the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

2 As to the model code of conduct see PARAS 233, 234. As to the Secretary of State see PARA 96; as to the Welsh Ministers see PARA 97.

3 As to the duty to adopt a code of conduct see PARA 235.

4 As to the duty of members and co-opted members to comply with a code of conduct see PARA 236.

5 As to the conduct of local government employees see PARA 439.

6 As to maladministration see PARA 839 et seq. As to misfeasance in public office see **TORT** vol 45(2) (Reissue) PARAS 502, 844-846.

7 I.e. the Local Government and Housing Act 1989 s 31 (prospectively repealed): see PARA 231.

8 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 97.

9 I.e. the National Code of Local Government Conduct (Joint Circular of the Department of the Environment 8/90 and the Welsh Office 23/90): see PARA 231.

10 As to pecuniary interests of members of authorities see PARA 285 et seq.

11 See PARA 231 note 2; and PARA 285. The Local Government Finance Act 1992 s 106, which relates to council tax arrears, continues to apply: see PARA 293; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 351.

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(ii) Standards of Conduct under the Local Government and Housing Act 1989

231. Power to issue a National Code of Local Government Conduct.

Until a day to be appointed¹, and subject to extensive disapplication², the Secretary of State or the Welsh Ministers³ may issue, for the guidance of members⁴ of local authorities⁵, a code of recommended practice as regards the conduct of members of such authorities, to be known as the National Code of Local Government Conduct⁶. The Secretary of State or the Ministers may revise or withdraw such a code⁷, but before doing so must to consult such representatives of local government as appear to him or them to be appropriate⁸, and follow the appropriate procedure⁹.

1 As from a day to be appointed the Local Government and Housing Act 1989 s 31 is repealed by the Local Government Act 2000 s 107, Sch 5 para 26, Sch 6. At the date at which this volume states the law no such day had been appointed.

2 Any regulations made under the Local Government and Housing Act 1989 s 31 (prospectively repealed: see note 1) are disappplied as respects police authorities in England and Wales and other specified local authorities in England: see the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 3(c). Where a county, county borough, community council, fire and rescue authority or national park authority in Wales has adopted a code of conduct or such a code applies to it, any regulations made or code issued under the Local Government and Housing Act 1989 s 31 are disappplied: see the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, art 4(1)(b), (2)(b), (3).

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 For these purposes, 'member' in relation to a local authority includes any person who, whether or not a member of the authority, is a member of a committee or sub-committee of the authority or of any of its joint committees: Local Government and Housing Act 1989 s 31(8) (prospectively repealed: see note 1).

5 For these purposes, 'local authority' means a county council, a county borough council, a district council, a London borough council, a parish council, a community council, the Common Council of the City of London or the Council of the Isles of Scilly: Local Government and Housing Act 1989 s 31(8) (definition amended by SI 1996/3071; and as prospectively repealed: see note 1). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to the meaning of 'local authority' generally see PARA 23.

6 Local Government and Housing Act 1989 s 31(1) (prospectively repealed: see note 1). See the National Code of Local Government Conduct (Joint Circular of the Department of the Environment 8/90 and the Welsh Office 23/90).

As to the inclusion of an undertaking to be guided by the National Code of Local Government Conduct in the declaration of acceptance of office see the Local Government and Housing Act 1989 s 31(7) (prospectively repealed: see note 1); and PARA 143 note 4.

7 Local Government and Housing Act 1989 s 31(2) (prospectively repealed: see note 1).

8 See the Local Government and Housing Act 1989 s 31(3) (prospectively repealed: see note 1).

9 See the Local Government and Housing Act 1989 s 31(4)-(6) (prospectively repealed: see note 1).

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(iii) Standards of Conduct under the Local Government Act 2000

A. STANDARDS OF CONDUCT

232. Power to specify the principles governing the conduct of members.

The Secretary of State¹ may by order specify the principles which govern the conduct of members² and co-opted members³ of relevant authorities⁴ in England and police authorities in Wales⁵.

Before making such an order, the Secretary of State must consult such representatives of the relevant authorities in England as he considers appropriate⁶, the Audit Commission⁷, the Commission for Local Administration in England⁸, and such other persons, if any, as he considers appropriate⁹. Before making an order which relates to police authorities in Wales, the Secretary of State must consult such representatives of police authorities in Wales as he considers appropriate¹⁰, the Auditor General for Wales¹¹, the Public Services Ombudsman for Wales¹² and the Welsh Ministers¹³.

The Welsh Ministers may by order specify the principles which govern the conduct of members and co-opted members of relevant authorities in Wales, other than police authorities¹⁴. The order may specify principles which are to apply to a person at all times and to a person otherwise than at all times¹⁵. Before making such an order, the Welsh Ministers must consult such representatives of relevant authorities in Wales as they consider appropriate¹⁶, the Auditor General for Wales¹⁷, the Public Services Ombudsman for Wales¹⁸ and such other persons, if any, as they consider appropriate¹⁹.

1 As to the Secretary of State see PARA 96.

2 Any reference in the Local Government Act 2000 Pt III (ss 49-83) (see PARA 232 et seq) to a member of a relevant authority, in the case of a relevant authority to which Pt II (ss 10-48) (see PARA 303 et seq) applies, includes a reference to an elected mayor or elected executive member of the authority: s 83(3). As to the meaning of 'elected mayor' see PARA 320 note 4 (definition applied by s 83(1)).

Any reference in Pt III to a member of a relevant authority, in the case of the Greater London Authority, is a reference to the Mayor of London or a London Assembly member: s 83(4). As to the Greater London Authority, Mayor of London and the London Assembly see **LONDON GOVERNMENT**.

3 For these purposes, 'co-opted member', in relation to a relevant authority (see note 4), means a person who is not a member of the authority but who: (1) is a member of any committee or sub-committee of the authority; or (2) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee: Local Government Act 2000 ss 49(7), 83(1). Any reference in Pt III to a committee of a relevant authority, in the case of a relevant authority to which Pt II applies, includes a reference to a committee of an executive of the authority: s 83(2). Any reference in Pt III to a joint committee or joint sub-committee of a relevant authority is a reference to a joint committee on which the authority is represented or a sub-committee of such a committee: s 83(5). As to committees and sub-committees generally see PARA 371 et seq. As to joint committees generally see PARA 380.

4 For these purposes, 'relevant authority' means: (1) a county council; (2) a county borough council; (3) a district council; (4) a London borough council; (5) a parish council; (6) a community council; (7) the Greater London Authority; (8) the Metropolitan Police Authority; (9) the London Fire and Emergency Planning Authority; (10) the Common Council of the City of London in its capacity as a local authority or police authority; (11) the Council of the Isles of Scilly; (12) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; (13) a police authority; (14) a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42); (15) the Broads Authority; or (16) a national park authority established under the Environment Act 1995 s 63: Local Government Act 2000 ss 49(6) (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 94), 83(1). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1). As to joint authorities see PARA 47 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Any functions which are conferred by virtue of Pt III on a relevant authority to which Pt II (ss 10-48) applies are not to be the responsibility of an executive of the authority under executive arrangements: s 83(14). Any

functions which are conferred on the Greater London Authority by virtue of Pt III are to be exercisable by the Mayor of London and the London Assembly acting jointly on behalf of the Greater London Authority: s 83(15). As to executive arrangements see PARA 303 et seq.

5 Local Government Act 2000 s 49(1). As to the orders made under s 49(1) see the Relevant Authorities (General Principles) Order 2001, SI 2001/1401, in respect of relevant authorities in England and police authorities in Wales. In summary the principles governing the conduct of members and co-opted members are: selflessness; honesty and integrity; objectivity; accountability; openness; personal judgment; respect for others; duty to uphold the law; stewardship; and leadership. The principles of honesty and integrity and the duty to uphold the law are expressed to be the only ones which have effect in relation to the activities of a member that are undertaken otherwise than in an official capacity: art 3(2). See also note 14.

As from a day to be appointed an order made under the Local Government Act 2000 s 49(1) must provide as respects each specified principle that it applies to a person only when acting in an official capacity, or that it applies to a person only when not acting in an official capacity: s 49(2A) (s 49(2A), (2B) prospectively added by the Local Government and Public Involvement in Health Act 2007 s 183(1)). The order may provide that it applies to a person only when not acting in an official capacity only as respects a principle which prohibits particular conduct (or conduct of a particular description) where that conduct would constitute a criminal offence: Local Government Act 2000 s 49(2A), (2B) (as so prospectively added). At the date at which this volume states the law no such day had been appointed. The order may define, for the purposes of the order, 'official capacity' and 'criminal offence': s 49(2C) (added by the Local Government and Public Involvement in Health Act 2007 s 183(1)). See also *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), [2006] LGR 799, [2006] NLJR 1650.

6 Local Government Act 2000 s 49(3)(a).

7 Local Government Act 2000 s 49(3)(b). For these purposes, 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England and Wales: s 83(1) (amended by Local Government and Public Involvement in Health Act 2007 ss 146(3), 241, Sch 9 para 1(1), (2)(p), Sch 18 Pt 9). As to the Audit Commission see PARA 744 et seq.

8 Local Government Act 2000 s 49(3)(c). As to the Commission for Local Administration in England see PARA 839 et seq.

9 Local Government Act 2000 s 49(3)(d).

10 Local Government Act 2000 s 49(4)(a).

11 Local Government Act 2000 s 49(4)(aa) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 52, 53(1), (2)). As to the Auditor General for Wales see PARA 796 et seq.

12 Local Government Act 2000 s 49(4)(b) (substituted by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1(2)(a)). As to the Public Services Ombudsman for Wales see PARA 267 et seq.

13 Local Government Act 2000 s 49(4)(c). As to the Welsh Ministers see PARA 97.

14 Local Government Act 2000 s 49(2). As to the orders made under s 49(2) see the Conduct of Members (Principles)(Wales) Order 2001, SI 2001/2276 (amended SI 2005/2929). In summary the principles governing the conduct of members and co-opted members are selflessness, honesty, integrity and propriety, duty to uphold the law, stewardship, objectivity in decision-making, equality and respect, openness, accountability, and leadership: see the Conduct of Members (Principles)(Wales) Order 2001, SI 2001/2276, art 3, Schedule. See also note 5.

15 Local Government Act 2000s 49(2D) (added by the Local Government and Public Involvement in Health Act 2007 s 183(1)).

16 Local Government Act 2000 s 49(5)(a).

17 Local Government Act 2000 s 49(5)(b) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 52, 53(1), (3)).

18 Local Government Act 2000 s 49(5)(c) (substituted by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 2(b)).

19 Local Government Act 2000 s 49(5)(d).

UPDATE

232 Power to specify the principles governing the conduct of members

NOTE 4--Definition of 'relevant authority' in Local Government Act 2000 s 49(6) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 93.

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233. Power to issue model code of conduct.

The Secretary of State¹ may by order issue a model code as regards the conduct which is expected of members² and co-opted members³ of relevant authorities⁴ in England and police authorities⁵ in Wales⁶.

The Welsh Ministers⁷ may by order issue a model code as regards the conduct of members and co-opted members of relevant authorities in Wales other than police authorities⁸. Such a model code may include provisions which are to apply to a person at all times and to a person otherwise than at all times⁹.

The power to issue a model code of conduct includes the power to revise any such model code which has been issued¹⁰. A model code of conduct must be consistent with the principles for the time being specified¹¹, may include provisions which are mandatory¹², and may include provisions which are optional¹³.

Before making an order, the Secretary of State or the Welsh Ministers must carry out any required consultation¹⁴. For the purpose of facilitating the making of an order, the Secretary of State may invite such body (or bodies) as he considers appropriate to draw up and send to him a proposed model code of conduct or proposed revisions to such a model code¹⁵.

1 As to the Secretary of State see PARA 96.

2 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

3 As to the meaning of 'co-opted member' see PARA 232 note 3.

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

6 Local Government Act 2000 s 50(1). As to the orders made under s 50(1) see the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, in relation to relevant authorities in England and police authorities in Wales; and the Greater London Authority (Declaration of Acceptance of Office) Order 2002, SI 2002/1044 (see **LONDON GOVERNMENT**).

As from a day to be appointed the model code issued under the Local Government Act 2000 s 50(1) must provide, as respects each provision of the code which relates to the conduct expected of those persons to whom it applies: (1) that the provision applies to a person only when acting in an official capacity; or (2) that it applies to a person only when not acting in an official capacity: s 50(4A) (s 50(4A), (4B) prospectively added by the Local Government and Public Involvement in Health Act 2007 s 183(2)). The code may provide that a provision only applies to a person when not acting in an official capacity only when that provision prohibits particular conduct (or conduct of a particular description) where that conduct would constitute a criminal offence: Local Government Act 2000 s 50(4A), (4B) (as so prospectively added). At the date at which this volume states the law no such day had been appointed. For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 183(7)-(11). The model code may define for the purposes of the

code, 'official capacity' and 'criminal offence': s 50(4C) (added by the Local Government and Public Involvement in Health Act 2007 s 183(2)).

Any provision under s 50(4A), (4C) in a model code of conduct: (a) must be consistent with the provision for the time being included in an order under s 49(1) by virtue of s 49(2A) or (2C) (see PARA 232); (b) is to be mandatory except to the extent that it relates to an optional provision; and (c) to the extent that it relates to an optional provision, is to be mandatory where that optional provision is incorporated in a code of conduct under s 51 (see PARA 235): Local Government Act 2000 s 50(4D).

7 As to the Welsh Ministers see PARA 97.

8 Local Government Act 2000 s 50(2). As to the conduct of members under the Local Government and Housing Act 1989 see PARA 231. As to orders made under s 50(2) see the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788 (see PARA 234), in relation to relevant authorities in Wales other than police authorities. For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 183(7)-(11).

9 Local Government Act 2000 s 50(4E) (added by the Local Government and Public Involvement in Health Act 2007 s 183(2)).

10 Local Government Act 2000 s 50(3).

11 Local Government Act 2000 s 50(4)(a). The principles referred to in the text are those contained in an order under s 49(1) or s 49(2) (see PARA 232), as the case may be.

12 Local Government Act 2000 s 50(4)(b).

13 Local Government Act 2000 s 50(4)(c).

14 Local Government Act 2000 s 50(5). The consultation referred to in the text is that required by virtue of s 49: see PARA 232.

15 Local Government Act 2000 s 50(6). An invitation under s 50(6): (1) must be made in writing; (2) may be made to more than one body; (3) may be limited to particular descriptions of authority; (4) must specify the period within which the proposals are to be drawn up and sent to the Secretary of State; (5) may require different proposals to be drawn up for different authorities or descriptions of authority; and (6) may require any body to which the invitation is made to consult such persons as may be specified in the invitation: s 50(7).

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234. Model code of conduct.

The following provisions have effect as the model code issued by the Secretary of State¹ as regards the conduct which is expected of members² of relevant authorities³ in England and police authorities in England and Wales⁴. Subject to certain exceptions these provisions are mandatory⁵. They must be read with the general principles prescribed by the Secretary of State⁶. A member must comply with the relevant model code of conduct whenever he conducts the business of his authority (including the business of the office to which he is elected or appointed) or acts, claims to act or gives the impression that he is acting as a representative of his authority⁷.

In general, a member must treat others with respect⁸, and must not:

341 (1) do anything which may cause the authority to breach any of the equality enactments⁹;

342 (2) bully any person¹⁰;

- 343 (3) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings in relation to an allegation that a member has failed to comply with an authority's code of conduct¹¹;
- 344 (4) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority¹²;
- 345 (5) except under specified circumstances, disclose information given in confidence by anyone, or acquired by the member which he believes to be, or ought reasonably to be aware is, confidential in nature¹³;
- 346 (6) prevent another person from gaining access to information to which that person is entitled by law¹⁴;
- 347 (7) conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute¹⁵; and
- 348 (8) use or attempt to use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage¹⁶.

The member must, when using or authorising the use by others of the resources of the authority, act in accordance with the authority's reasonable requirements, ensure that such resources are not used improperly for political purposes (including party political purposes)¹⁷ and have regard to any applicable Local Authority Code of Publicity¹⁸. When reaching decisions on any matter the member must have regard to any relevant advice provided by the authority's chief finance officer¹⁹ and the authority's monitoring officer²⁰ where that officer is acting pursuant to his statutory duties²¹. Reasons must be given for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority²².

If a member has a personal interest in any business of the authority²³ and he attends a meeting²⁴ of the authority at which the business is considered, he must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent²⁵.

Where a member has a prejudicial interest²⁶ in any business of the authority, he may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise²⁷.

Subject to the provisions concerning sensitive information²⁸, the member must, within 28 days of the model code being adopted by or applied to the authority or his election or appointment to office (where that is later), register in the authority's register of members' interests²⁹ details of the personal interests³⁰ by providing written notification to the authority's monitoring officer³¹. Furthermore, the member must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered, register details of that new personal interest or change by providing written notification to the authority's monitoring officer³².

Where the member considers that the information relating to any of his personal interests is sensitive information³³, and the authority's monitoring officer agrees, he need not include that information when registering that interest, or, as the case may be, a change to that interest³⁴.

A similar code has been issued by the Welsh Ministers³⁵ as regards the conduct expected of members of relevant authorities in Wales³⁶, although there are differences in detail, and some additional specified obligations³⁷. The model code must be read with the general principles prescribed by the Welsh Ministers³⁸.

1 le issued under the Local Government Act 2000 s 50: see PARA 233. As to the Secretary of State see PARA 96.

2 'Member' includes a co-opted member and an appointed member: Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 1(4).

3 The Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, applies to the following authorities: (1) a county council; (2) a district council; (3) a London borough council; (4) a parish council; (5) the Greater London Authority; (6) the Metropolitan Police Authority; (7) the London Fire and Emergency Planning Authority; (8) the Common Council of the City of London; (9) the Council of the Isles of Scilly; (10) a fire and rescue authority; (11) a joint authority; (12) the Broads Authority; or (13) a national park authority: art 1(2)(b). As to areas and authorities in England see PARA 24 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to fire and rescue authorities see **FIRE SERVICES**. As to joint authorities see PARA 47 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, arts 1, 2(1). A similar code applies to relevant authorities in Wales: see the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788; and note 35.

5 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 2(2)-(6).

6 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 1(2). As to the general principles see PARA 232.

7 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 2(1). The code does not in general have effect other than where a member's conduct is in his official capacity: see Schedule para 2(2). See further *R (on the application of Mullaney) v The Adjudication Panel for England* [2009] EWHC 72 (Admin), [2009] All ER (D) 102 (Feb). However, the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule paras 3(2)(c), 5 and 6(a) (see the text to notes 11, 15 and 16) also have effect at any other time where a member's conduct constitutes a criminal offence for which the member has been convicted: Schedule para 2(3). Conduct to which the code applies (whether that is conduct in an official capacity or conduct under Schedule para 2(3)) includes a criminal offence for which a member is convicted (including an offence committed before the date the member took office, but for which he is convicted after that date): Schedule para 2(4).

8 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 3(1). See also *R (on the application of Mullaney) v The Adjudication Panel for England* [2009] EWHC 72 (Admin), [2009] All ER (D) 102 (Feb).

9 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 3(2)(a). As to the equality enactments see the Equality Act 2006 s 33; **DISCRIMINATION** vol 13 (2007 Reissue) PARA 316.

10 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 3(2)(b).

11 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 3(2)(c).

12 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 3(2)(d). In relation to police authorities and the Metropolitan Police Authority, for these purposes those who work for, or on behalf of, an authority are deemed to include a police officer: Schedule para 3(3).

13 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 4(a). The exceptions are where: (1) the member has the consent of a person authorised to give it; (2) he is required by law to do so; (3) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or (4) the disclosure is reasonable and in the public interest, and made in good faith and in compliance with the reasonable requirements of the authority: Schedule para 4(a)(i)-(iv). See also *Dimoldenberg* APE Decision 0241 (20 May 2005).

14 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 4(b).

15 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 5. See *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), [2006] LGR 799, [2006] NLJR 1650 (offensive remarks made by the then Mayor of London when not acting in his official capacity did not mean he had brought his office into disrepute). See also *R v Central Independent Television plc* [1994] Fam 192, [1994] 3 All ER 641; and *Sanders v Kingston* [2005] EWHC 1145 (Admin), [2005] LGR 719 as to a member's right to freedom of speech under art 10 of the European Convention of Human Rights.

16 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 6(a).

17 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 6(b).

18 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 6(c). A Local Authority Code of Publicity is made under the Local Government Act 1986: see PARA 548.

19 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 7(1)(a).

20 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 7(1)(b).

21 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 7(1).

22 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 7(2).

23 A member has a personal interest in any business of the authority where it relates to or is likely to affect (1) any body of which he is a member or in a position of general control or management and to which he is appointed or nominated by the authority; (2) any body exercising functions of a public nature, directed to charitable purposes or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which he is a member or in a position of general control or management; (3) any employment or business carried on by the member; (4) any person or body who employs or has appointed the member; (5) any person or body, other than a relevant authority, who has made a payment to the member in respect of his election or any expenses incurred by him in carrying out his duties; (6) any person or body who has a place of business or land in the authority's area, and in whom he has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower); (7) any contract for goods, services or works made between the authority and the member or a firm in which the member is a partner, a company of which the member is a remunerated director, or a person or body of the description specified under head (6) above; (8) the interests of any person from whom the member has received a gift or hospitality with an estimated value of at least £25; (9) any land in the authority's area in which he has a beneficial interest; (10) any land where the landlord is the authority and the member, a firm in which the member is a partner, a company of which the member is a remunerated director, or a person or body of the description specified in head (7), is the tenant; or (11) any land in the authority's area for which the member has a licence (alone or jointly with others) to occupy for 28 days or longer: Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 8(1)(a). A member also has a personal interest where a decision in relation to that business might reasonably be regarded as affecting the member's well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of: (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; (b) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or (c) (in all other cases) other council tax payers, ratepayers or inhabitants of the authority's area: Schedule para 8(1)(b). For these purposes, a relevant person is (i) a member of the member's family or any person with whom he has a close association; (ii) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; (iii) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or (iv) any body of a type described in head (1) or (2) above: Schedule para 8(2). See also *Murphy v Ethical Standards Officer of the Standards Board for England* [2004] EWHC 2377 (Admin), [2005] LGR 161 as to the wide interpretation of 'well-being'.

24 'Meeting' includes any meeting of the authority, the executive of the authority and any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees or area committees: Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 1(4).

25 See the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 9(1). This obligation only applies where the member is aware or ought reasonably to be aware of the existence and nature of the personal interest: Schedule para 9(4). As to the other exceptions see Schedule para 9(2), (3), (5)-(7).

26 A prejudicial interest is where the member has a personal interest in any business of the authority and the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest: Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 10(1). As to the circumstances where a member does not have a prejudicial interest see Schedule para 10(2). A member also has a prejudicial interest in any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where that business relates to a decision made (whether implemented or not) or action taken by the authority's executive or another of the authority's committees, sub-committees, joint committees or joint sub-committees and at the time the decision was made or action was taken, he was a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned and was present when that

decision was made or action was taken: Schedule para 11. Cf *R (on the application of Richardson) v North Yorkshire County Council* [2003] EWCA Civ 1860, [2004] 2 All ER 31, [2004] 1 WLR 1920.

27 Local Authorities (Model Code of Conduct) Order 2007, 2007/1159, Schedule para 12(2). Where a member has a prejudicial interest he must, subject to Schedule para 12(2): (1) withdraw from the room or chamber where a meeting considering the business is being held, immediately after making representations, answering questions or giving evidence, or, whenever it becomes apparent that the business is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee; (2) not exercise executive functions in relation to that business; and (3) not seek improperly to influence a decision about that business: Schedule para 12(1).

28 In the Local Authorities (Model Code of Conduct) Order 2007, 2007/1159, Schedule para 14 (see note 33).

29 In the register maintained under the Local Government Act 2000 s 81(1): see PARA 237.

30 In where they fall within a category mentioned in the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 8(1)(a): see note 23.

31 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 13(1).

32 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 13(2).

33 'Sensitive information' means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the member or a person who lives with him may be subjected to violence or intimidation: Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 14(3).

34 Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, Schedule para 14(1).

35 In issued by the Welsh Ministers under the Local Government Act 2000 s 50(4): see PARA 233. As to the Welsh Ministers see PARA 97.

36 For the purposes of the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, 'relevant authority in Wales' means: (1) a county council; (2) a county borough council; (3) a community council; (4) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; or (5) a national park authority established under the Environment Act 1995 s 63: Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, Schedule para 1(1). As to areas and authorities in Wales see PARA 37 et seq. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

37 See the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788. Under the code set out in this order a member must, in addition to the obligations noted above: (1) report, whether through the relevant authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, the authority which he reasonably believes involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty); (2) report to the Public Services Ombudsman for Wales and to the relevant authority's monitoring officer any conduct by another member which he reasonably believes breaches the code of conduct; (3) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the relevant authority; (4) comply with any request of the relevant authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers; (5) observe the law and the relevant authority's rules governing the claiming of expenses and allowances in connection with his duties as a member; and (6) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by the authority), material benefits or services for himself or any person which might place him, or reasonably appear to place him, under an improper obligation: see the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, Schedule paras 6(1)(b)-(d), (2), 9. As to the Public Services Ombudsman for Wales see PARA 267 et seq. As to monitoring officers see PARA 429.

38 Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, Schedule para 2(2). As to the general principles see PARA 232.

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235. Duty to adopt code of conduct.

The relevant authority¹ must, before the end of the period of six months beginning with the day on which the first order² issuing a model code of conduct which applies to it is made, pass a resolution³ adopting a code as regards the conduct which is expected of members⁴ and co-opted members⁵ of the authority, referred to as a code of conduct⁶. The relevant authority must within a similar period after a subsequent order is made⁷ pass a resolution⁸: (1) adopting a code of conduct in place of its existing code of conduct⁹; or (2) revising its existing code of conduct¹⁰. In addition to its duty to adopt or reissue its code of conduct after an order is made, a relevant authority also has a separate power under which it may by resolution adopt a code of conduct in place of its existing code of conduct¹¹ or revise its existing code of conduct¹².

A code of conduct or revised code of conduct¹³: (a) must incorporate any mandatory provisions of the model code of conduct¹⁴ which for the time being applies to that authority¹⁵; (b) may incorporate any optional provisions of that model code¹⁶; (c) and may include other provisions which are consistent with that model code¹⁷.

Where a relevant authority fails to comply with the duty to adopt a code of conduct¹⁸ before the end of the period mentioned above, it must comply with that duty as soon as reasonably practicable after the end of that period¹⁹, and any mandatory provision of the model code of conduct which for the time being applies to the authority is to apply in relation to the members and co-opted members of the authority for so long as the authority fails to comply with that duty²⁰.

As soon as reasonably practicable after adopting or revising a code of conduct under this provision, a relevant authority must²¹:

- 349 (i) ensure that copies of the code or revised code of conduct are available at an office of the authority for inspection by members of the public at all reasonable hours²²;
- 350 (ii) publish in one or more newspapers circulating in its area a notice which (A) states that it has adopted or revised a code of conduct; (B) states that copies of the code or revised code are available at an office of the authority for inspection by members of the public at such times as may be specified in the notice; and (C) specifies the address of that office²³; and
- 351 (iii) send a copy of the code or revised code, in the case of a relevant authority in England or a police authority²⁴ in Wales, to the Standards Board for England²⁵, and in the case of a relevant authority in Wales, to the Public Services Ombudsman for Wales²⁶.

A relevant authority may publicise its adoption or revision of a code of conduct in any other manner that it considers appropriate²⁷.

1 As to the meaning of 'relevant authority' see PARA 232 note 4.

2 I.e. under the Local Government Act 2000 s 50: see PARA 233.

3 A relevant authority's function with respect to the passing of a resolution under the Local Government Act 2000 s 51 may be discharged only by the authority, and accordingly, in the case of a relevant authority to which the Local Government Act 1972 s 101 (see PARA 370) applies, is not a function to which s 101 applies: Local Government Act 2000 s 51(9). As to the discharge of functions of local authorities see PARA 369 et seq.

4 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

5 As to the meaning of 'co-opted member' see PARA 232 note 3.

6 Local Government Act 2000 ss 51(1), 83(1).

7 le under the Local Government Act 2000 s 50: see PARA 233.

8 See the Local Government Act 2000 s 51(2).

9 Local Government Act 2000 s 51(2)(a).

10 Local Government Act 2000 s 51(2)(b).

11 Local Government Act 2000 s 51(3)(a).

12 Local Government Act 2000 s 51(3)(b).

13 Local Government Act 2000 s 51(4).

14 As to the model code of conduct see PARA 234.

15 Local Government Act 2000 s 51(4)(a).

16 Local Government Act 2000 s 51(4)(b).

17 Local Government Act 2000 s 51(4)(c). As from a day to be appointed where under s 52(4)(c) a provision relating to the conduct expected of persons is included in the code of a relevant authority in England or police authority in Wales, the code must provide that it applies to a person only when acting in an official capacity (within the meaning given by the code), or that it applies to a person only when not acting in an official capacity: s 51(4A) (s 51(4A), (4B) prospectively added by the Local Government and Public Involvement in Health Act 2007 s 183(3)). The code may provide that it applies to a person only when not acting in an official capacity if it prohibits particular conduct (or conduct of a particular description) where that conduct would constitute a criminal offence within the meaning of the code: see the Local Government Act 2000 s 51(4A), (4B) (as so prospectively added). At the date at which this volume states the law no such day had been appointed.

The provisions which may be included under s 51(4)(c) by a relevant authority in Wales other than a police authority include provisions which are to apply to a person at all times and provisions which are to apply to a person otherwise than at all times: Local Government Act 2000 s 51(4C) (added by the Local Government and Public Involvement in Health Act 2007 s 183(3)).

18 le under the Local Government Act 2000 s 51(1) (see the text and notes 1-6) or s 51(2) (see the text and notes 7-10).

19 Local Government Act 2000 s 51(5)(a).

20 Local Government Act 2000 s 51(5)(b). Any reference in Pt III (ss 49-83) to a failure to comply with a relevant authority's code of conduct includes a reference to a failure to comply with the mandatory provisions which apply to the members or co-opted members of the authority by virtue of s 51(5)(b): s 83(6). As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

21 Local Government Act 2000 s 51(6).

22 Local Government Act 2000 s 51(6)(a).

23 Local Government Act 2000 s 51(6)(b). Where a relevant authority publishes a newspaper itself, the duty to publish a notice under s 51(6)(b) is to be construed as a duty to publish that notice in its newspaper and at least one other newspaper circulating in its area: s 51(7).

24 For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

25 As to the Standards Board for England see PARA 243 et seq.

26 Local Government Act 2000 s 51(6)(c) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 2). As to the Public Services Ombudsman for Wales see PARA 267 et seq.

27 Local Government Act 2000 s 51(8).

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236. Duty of member to comply with code of conduct.

A person who is a member¹ or co-opted member² of a relevant authority³ at a time when the authority adopts a code of conduct for the first time⁴ must, before the end of the permitted period⁵, give the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being⁶. The form of declaration of acceptance of office⁷ which may be prescribed⁸ may include an undertaking by the declarant that in performing his functions he will observe the authority's code of conduct for the time being⁹.

1 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

2 As to the meaning of 'co-opted member' see PARA 232 note 3.

3 As to the meaning of 'relevant authority' see PARA 232 note 4.

4 Local Government Act 2000 s 52(1). The code of conduct referred to in the text is a code adopted under s 51 (see PARA 235). As to the meaning of 'code of conduct' see PARA 235. As to the code of conduct in force on the date at which this volume states the law see PARA 234.

5 I.e. before the end of the period of two months beginning with the date on which the code of conduct is adopted: Local Government Act 2000 s 52(1)(a).

6 Local Government Act 2000 s 52(1)(a) (as amended in relation to Wales, and prospectively amended in relation to England: see below. If he fails to give such an undertaking, he ceases to be a member or co-opted member at the end of that period: see s 52(1)(b); and PARA 295.

The expression 'performing his functions' covers a member's use of his position in a way that amounts to misconduct, even when he is acting outside his official capacity: see *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin), [2006] LGR 799, [2006] NLJR 1650. As from 31 January 2008 in relation to Wales (see the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 2(1)(u)(ii), 5(2)) and as from a day to be appointed in relation to England, the Local Government Act 2000 s 52(1)-(4) is amended by the Local Government and Public Involvement Act 2007 s 183(4) to remove the expression 'in performing his functions' wherever it appears. At the date at which this volume states the law no such day had been appointed in relation to England. For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 183(5), (6); and the Relevant Authorities (Code of Conduct) (Prescribed Period for Undertakings) (Wales) Order 2008, SI 2008/929.

7 As to the declaration of acceptance of office see PARA 143.

8 I.e. by an order under the Local Government Act 1972 s 83: see PARA 143.

9 Local Government Act 2000 s 52(2). A person who becomes a member of a relevant authority to which the Local Government Act 1972 s 83 (see PARA 143) does not apply at any time after the authority has adopted a code of conduct under the Local Government Act 2000 s 51 (see PARA 235) for the first time, may not act in that office unless he has given the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being under s 51: s 52(3) (as amended in relation to Wales, and prospectively amended in relation to England: see note 6). As to the inclusion of an undertaking under the Local Government and Housing Act 1989 s 31(7) (prospectively repealed) see PARAS 143 note 4.

A person who becomes a co-opted member of a relevant authority at any time after the authority has adopted a code of conduct for the first time, may not act unless he has given the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being: Local Government Act 2000 s 52(4) (as so amended in relation to Wales, and prospectively amended in relation to England).

In relation to a relevant authority whose members and co-opted members are subject to mandatory provisions by virtue of the Local Government Act 2000 s 51(5)(b) (see PARA 235), the references to the authority's code of conduct for the time being under s 51 include the mandatory provisions which for the time being apply to the members and co-opted members of the authority: s 52(5)(a) (s 52(5) added by the Local Government and Public Involvement in Health Act 2007 s 184(2)). Further, the references to any time after the authority has

adopted a code of conduct under s 51 for the first time are to be read as references to any time after the coming into force of the Local Government and Public Involvement in Health Act 2007 s 184 (ie 31 January 2008: see the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 2(1)(i)): Local Government Act 2000 s 52(5)(b) (as so added).

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237. Disclosure and registration of members' interests.

The monitoring officer¹ of each relevant authority² must establish and maintain a register of interests of the members³ and co-opted members⁴ of the authority⁵. The mandatory provisions of the model code⁶ applicable to each relevant authority require the members and co-opted members of each authority to register in that authority's register such financial and other interests as are specified⁷. The mandatory provisions also require any member or co-opted member of a relevant authority who has a specified interest to disclose that interest before taking part in any business of the authority relating to that interest⁸, and make provision for preventing or restricting the participation of a member or co-opted member of a relevant authority in any business of the authority to which an interest so disclosed relates⁹.

Any participation by a member or co-opted member of a relevant authority in any business which is prohibited by the mandatory provisions, is not a failure to comply with the authority's code of conduct¹⁰ if the member or co-opted member has acted in accordance with a dispensation from the prohibition granted by the authority's standards committee¹¹. The Secretary of State may prescribe in regulations the circumstances in which standards committees may grant such dispensations¹².

A relevant authority must ensure that copies of the register for the time being maintained by its monitoring officer under these provisions are available at an office of the authority for inspection by members of the public at all reasonable hours¹³. As soon as practicable after the establishment by its monitoring officer of a register, a relevant authority must: (1) publish in one or more newspapers circulating in its area a notice which states that copies of the register are available at an office of the authority for inspection by members of the public at all reasonable hours, and specifies the address of that office¹⁴; (2) if it is a relevant authority in England or a police authority in Wales, inform the Standards Board for England¹⁵ that copies of the register are available¹⁶; and (3) if it is a relevant authority in Wales, inform the Public Services Ombudsman for Wales¹⁷ that copies of the register are available¹⁸.

1 As to monitoring officers see PARA 429.

2 As to the meaning of 'relevant authority' see PARA 232 note 4.

3 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

4 As to the meaning of 'co-opted member' see PARA 232 note 3.

5 Local Government Act 2000 s 81(1).

6 As to the model code of conduct see PARAS 233, 234.

7 Local Government Act 2000 s 81(2).

8 Local Government Act 2000 s 81(3)(a).

9 Local Government Act 2000 s 81(3)(b).

10 As to the duty of members to comply with the relevant authority's code of conduct see PARA 236. As to a relevant authority's duty to adopt a code of conduct see PARA 235.

11 Local Government Act 2000 s 81(4). The reference in the text to a dispensation is to a dispensation granted in accordance with s 81(5): see the text and note 12. As to standards committees see PARA 238 et seq.

12 Local Government Act 2000 s 81(5). Standards committees of relevant authorities in England and police authorities in Wales may grant a dispensation to a member in the following circumstances: (1) the transaction of business of the authority would, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because: (a) the number of members of the authority that are prohibited from participating in the business of the authority exceeds 50% of those members that are entitled or required to so participate; or (b) the authority is not able to comply with any duty which applies to it under the Local Government and Housing Act 1989 s 15(4) (see PARA 375); (2) the member has submitted to the standards committee a written request for a dispensation explaining why it is desirable; and (3) the standards committee concludes that having regard to the matters mentioned in head (1) above, the content of the application made pursuant to head (2) above, and to all the other circumstances of the case, it is appropriate to grant the dispensation: Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, SI 2002/339, reg 3(1). Nothing in reg 3(1) permits a dispensation to be granted in respect of participation in business of the authority conducted more than four years after the date on which the dispensation is granted or where the effect of the mandatory provisions from which a dispensation is sought is that: (i) a member is prohibited from participating in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority, or sub-committee of that committee, where that consideration relates to any decision made or action taken by any other of the authority's committees, sub-committees, joint committees, or joint sub-committees of which he may also be a member; or (ii) a member of the authority's executive is prohibited from exercising functions which are the responsibility of the executive of the authority and which would otherwise be discharged by him solely: reg 3(2). The authority's standards committee must ensure that the existence, duration and nature of any dispensation is recorded in writing and that such record is kept with the register of interests established and maintained under Local Government Act 2000 s 81(1) (see the text and notes 1-5): Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, SI 2002/339, reg 4.

'Dispensation' must be construed in accordance with the Local Government Act 2000 s 81(4) (see text and notes 10-11); 'mandatory provisions' means the mandatory provisions of a model code of conduct which for the time being applies to the authority; and 'member' means a member or co-opted member of an authority: Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, SI 2002/339, reg 2.

The standards committee of a relevant authority in Wales may grant dispensations where: (A) no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered have an interest which relates to that business; (B) no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered have an interest which relates to that business and either head (D) or (E) below also applies; (C) in the case of a county or county borough council, the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected; (D) the nature of the member's interest is such that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority's business; (E) the interest is common to the member and a significant proportion of the general public; (F) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise; (G) the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest; (H) the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation may not extend to participation in any vote with respect to that business; or (I) it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the Welsh Ministers within seven days in such manner as it may specify: Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001/2279, reg 2.

'Interest' means an interest which is required to be registered in the relevant authority's register of interests; 'member' includes a co-opted member; 'relevant authority' means a county or county borough council, a community council, a fire and rescue authority or a national park authority; 'the Act' means the Local Government Act 2000; and 'voluntary organisation' means a body (other than a local authority or other public body) whose activities are carried on otherwise than for profit: Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001/2279, reg 1(3) (amended by SI 2005/2929).

As to the Secretary of State see PARA 96. In its application to standards committees of relevant authorities in Wales, other than police authorities, s 81(5) has effect as if for the reference to the Secretary of State there were substituted a reference to the Welsh Ministers: s 81(8). As to the Welsh Ministers see PARA 97. 'Police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

As to areas and authorities in Wales see PARA 37 et seq. As to fire and rescue authorities see **FIRE SERVICES**. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

13 Local Government Act 2000 s 81(6).

14 Local Government Act 2000 s 81(7)(a).

15 As to the Standards Board for England see PARA 243 et seq.

16 Local Government Act 2000 s 81(7)(b) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 22(a)).

17 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

18 Local Government Act 2000 s 81(7)(c) (added by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 22(b)).

UPDATE

237 Disclosure and registration of members' interests

NOTE 12--SI 2002/339 replaced: see the Standards Committee (Further Provisions) (England) Regulations 2009, SI 2009/1255, regs 16-19.

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B. STANDARDS COMMITTEES

238. Standards committees.

Every relevant authority¹ must establish a standards committee which has the functions conferred on it by or under Part III of the Local Government Act 2000².

The number of members of a standards committee of a relevant authority in England or of a police authority³ in Wales and their term of office are fixed by the authority⁴. A standards committee of a relevant authority in England or of a police authority in Wales must include⁵ at least two members of the authority⁶ and at least one person who is not a member or an officer⁷ of that or any other relevant authority⁸, and must be chaired by a person who is not a member or an officer of that or any other relevant authority⁹. A standards committee of a relevant authority in England which is operating executive arrangements¹⁰ may not include the elected mayor¹¹ or executive leader¹², and may not be chaired by a member of the executive¹³.

The Secretary of State¹⁴ may by regulations make provision¹⁵:

352 (1) as to the size and composition of standards committees of relevant authorities in England and police authorities in Wales¹⁶;

353 (2) as to the appointment¹⁷ to standards committees of persons who are not members or officers the relevant authority concerned or any other relevant authority¹⁸;

354 (3) with respect to the access of the public to meetings of standards committees¹⁹;

355 (4) with respect to the publicity given to meetings of standards committees²⁰;

- 356 (5) with respect to the production of agendas for, or records of, meetings of standards committees²¹;
- 357 (6) with respect to the availability to the public or members of relevant authorities of agendas for, records of or information connected with meetings of standards committees²²; and
- 358 (7) as to the proceedings and validity of proceedings of such committees²³.

The Standards Board for England²⁴ may issue guidance with respect to the size and composition of standards committees of relevant authorities in England and police authorities in Wales²⁵, and must send a copy of any such guidance to the Secretary of State²⁶. A relevant authority in England and a police authority in Wales must send a statement which sets out the terms of reference, or any revised terms of reference, of its standards committee to the Standards Board for England²⁷.

The Welsh Ministers²⁸ may by regulations make provision²⁹:

- 359 (a) as to the size and composition of standards committees of relevant authorities in Wales other than police authorities, including provision with respect to the appointment to any such committee of persons who are not members of the relevant authority concerned³⁰;
- 360 (b) as to the term of office of members of any standards committees³¹;
- 361 (c) as to the persons who may, may not or must chair any standards committees³²;
- 362 (d) as to the entitlement to vote of members of any standards committee who are not members of the relevant authority concerned³³;
- 363 (e) for or in connection with treating any standards committees as bodies to which certain provisions of the Local Government and Housing Act 1989³⁴ do not apply³⁵;
- 364 (f) with respect to the access of the public to meetings of standards committees³⁶;
- 365 (g) with respect to the publicity to be given to meetings of standards committees³⁷;
- 366 (h) with respect to the production of agendas for, or records of, meetings of standards committees³⁸;
- 367 (i) with respect to the availability to the public or members of relevant authorities of agendas for, records of or information connected with meetings of any standards committees³⁹;
- 368 (j) as to the proceedings and validity of proceedings of any standards committees⁴⁰; and
- 369 (k) for or in connection with requiring relevant authorities in Wales, other than police authorities, to send to the Public Services Ombudsman for Wales⁴¹ statements which set out the terms of reference of its standards committees⁴².

1 As to the meaning of 'relevant authority' see PARA 232 note 4. However, for these purposes, 'relevant authority' does not include parish or community councils: Local Government Act 2000 s 53(2). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 Local Government Act 2000 s 53(1). The reference in the text to the Local Government Act 2000 is to the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

3 For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

4 Local Government Act 2000 s 53(3). This is subject to any provision made by virtue of s 53(6)(a) (see the text and note 16): s 53(3).

5 Local Government Act 2000 s 53(4).

6 Local Government Act 2000 s 53(4)(a). As to the meaning of 'member of a relevant authority' see PARA 232 note 2. A member of a standards committee of a relevant authority in England or a police authority in Wales who is not a member of the authority is entitled to vote at meetings of the committee: s 53(8).

7 As to the meaning of 'officer' see PARA 425 note 3.

8 Local Government Act 2000 s 53(4)(b). However, a standards committee of a relevant authority in England or a police authority in Wales is not regarded as a body to which the Local Government and Housing Act 1989 s 15 (duty to allocate seats to political groups: see PARA 375) applies: Local Government Act 2000 s 53(10). As to the application of s 53(7)-(10) to sub-committees of standards committees see PARA 242.

9 Local Government Act 2000 s 53(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 187).

10 Local Government Act 2000 s 53(5). As to executive arrangements see PARA 303 et seq.

11 As to the meaning of 'elected mayor' see PARA 320 note 4.

12 Local Government Act 2000 s 53(5)(a). As to the meaning of 'executive leader' see PARA 327.

13 Local Government Act 2000 s 53(5)(b).

14 As to the Secretary of State see PARA 96.

15 Local Government Act 2000 s 53(6).

16 Local Government Act 2000 s 53(6)(a).

17 Ie within the Local Government Act 2000 s 53(4)(b): see the text and notes 7-8.

18 See the Local Government Act 2000 s 53(6)(b). Regulations under s 53(6)(b) may make provision in relation to sub-committees appointed under s 55(6)(a), (7)(a), (b) (see PARA 240): s 55(8) (amended by the Local Government and Public Involvement in Health Act 2007 ss 188(2)(h), 241, Sch 18 Pt 15).

A relevant authority in England, other than a parish council, must ensure that at least 25% of the members of its standards committee are independent members and where it is operating executive arrangements only one member of its standards committee is a member of the executive: Standards Committee (England) Regulations 2008, SI 2008/1085, regs 3, 4(1).

Where an authority is a responsible authority, it must ensure that at least two members of the standards committee are members of parish councils for which it is responsible, who are not also members of the responsible authority: reg 4(2).

'Responsible authority' means a district council or unitary county council which has functions in relation to parish councils for which it is responsible under the Local Government Act 2000 s 55(12) (see PARA 240); 'independent member' means a person appointed to a standards committee, or sub-committee of the standards committee, of an authority, who is not a member, or an officer, of that or any other relevant authority; 'member', in relation to parish councils, includes persons appointed under the Local Government Act 1972 s 16A (see PARA 164): Standards Committee (England) Regulations 2008, SI 2008/1085, reg 2.

As to executive arrangements see PARA 303 et seq.

A police authority in Wales must ensure that, where its standards committee has more than three members, at least 25% of them are independent members: Relevant Authorities (Standards Committee) Regulations 2001, SI 2001/2812, reg 3 (substituted by SI 2008/1085). A person may not be appointed as an independent member of a standards committee of such an authority or sub-committee of the standards committee unless the appointment is (1) approved by a majority of the members of the authority; (2) advertised in one or more newspapers circulating in the area of the authority; (3) of a person who has submitted an application to the authority; (4) of a person who has not within the period of five years immediately preceding the date of the appointment been a member or officer of the authority; and (5) of a person who is not a relative or close friend of a member or officer of the authority: Relevant Authorities (Standards Committee) Regulations 2001, SI 2001/2812, reg 4. Provision is also made as to appointments to the standards committee of a relevant authority in England: see reg 5.

For these purposes 'independent member' means a person appointed to a standards committee, or sub-committee of the standards committee, of an authority under the Local Government Act 2000 53(4)(b); and 'relative' means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons: reg 2.

19 Local Government Act 2000 s 53(6)(c). As to public access to meetings generally see PARA 644 et seq. The provision which may be made by virtue of s 53(6)(c)-(f) includes provision which applies or reproduces, with or without modifications, any provisions of the Local Government Act 1972 Pt VA (ss 100A-100K) (see PARA 661 et seq): Local Government Act 2000 s 53(12). The Local Government Act 1972 Pt 5A (ss 100A-100K) applies, with the exception of ss 100E, 100G, 100J, 100K, and subject to further modification, in relation to meetings of a standards committee, or sub-committee of a standards committee, of a relevant authority in England and a police authority in Wales: see the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 8; and the Relevant Authorities (Standards Committee) Regulations 2001, SI 2001/2812, reg 7.

20 Local Government Act 2000 s 53(6)(d).

21 Local Government Act 2000 s 53(6)(e).

22 Local Government Act 2000 s 53(6)(f).

23 Local Government Act 2000 s 53(6)(g).

A meeting of a standards committee, or sub-committee of a standards committee of a relevant authority in England other than a parish council, is be quorate unless at least three members of that committee or sub-committee are present for its duration: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 7(1). Further provision is made with regard to the validity of proceedings where a meeting is convened to consider a request, or discharge a function under the Local Government Act 2000 ss 57A or 57B (see PARA 247), or the Standards Committee (England) Regulations 2008, SI 2008/1085, regs 17-20 (see PARA 261 et seq): reg 7(2)-(4).

A meeting of a standards committee or sub-committee of a standards committee of a police authority in Wales is not quorate unless at least three members (including at least one independent member) of that committee or sub-committee are present for its duration, but where at least one independent member would have been present for the duration of the meeting but for the fact that he was prevented or restricted from participating in any business of the authority by virtue of its code of conduct, the requirement for the quorum to include at least one independent member does not apply: Relevant Authorities (Standards Committee) Regulations 2001, SI 2001/2812, reg 6.

24 As to the Standards Board for England see PARA 243 et seq.

25 Local Government Act 2000 s 53(7)(a).

26 Local Government Act 2000 s 53(7)(b).

27 Local Government Act 2000 s 53(9).

28 As to the Welsh Ministers see PARA 97.

29 Local Government Act 2000 s 53(11). Regulations under s 53(11) may also make provision in relation to sub-committees appointed under s 56 (see PARA 241): s 56(5).

30 Local Government Act 2000 s 53(11)(a). A standards committee of a relevant authority in Wales must consist of not less than five nor more than nine members: see the Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 3(1) (substituted by SI 2006/1849). As to sub-committees see PARA 242. The membership of a standards committee must not consist of persons other than: (1) persons who are members of the relevant authority concerned; (2) independent members; or (3) community committee members: reg 4. Where the total number of members of a standards committee is an even number at least half that number must be independent members: reg 5(1). Where the total number of members of a standards committee is an odd number a majority of that number must be independent members: reg 5(2). A person who has been but is no longer a member or an officer of one or more relevant authorities may not be an independent member of the standards committee of any relevant authority of which that person was a member or officer: see regs 6(1), 7(1). A person who has been but is no longer a member or officer of one or more relevant authorities may, after the period of 12 months commencing with the date on which that person ceased to be a member of any relevant authority, be an independent member of a standards committee of a relevant authority of which that person has not been a member or officer: see regs 6(2), 7(2). Further provision is made with regard to the composition of the standards committee of a relevant authority in Wales: see regs 8-11 (reg 10 substituted by SI 2006/1849).

A relevant authority must establish criteria for the appointment of independent members to its standards committee, and where a vacancy arises for a post as an independent member of a standards committee the relevant authority concerned must publish an advertisement in not less than two newspapers (which are not published by that relevant authority) circulating in its area, which advertisement must also include those criteria: Standards Committees (Wales) Regulations 2001, SI 2001/2283, regs 13(1), 14. Such an advertisement notifies the local government electors for the relevant authority's area that the relevant authority is seeking to

appoint an independent member to its standards committee: reg 13(2). A relevant authority may publish an advertisement in connection with any vacancy for a post as an independent member on that relevant authority's standards committee in any newspaper that it publishes: reg 13(3). Such an advertisement may, if the relevant authority concerned considers appropriate: (a) notify local government electors for that relevant authority's area that the chairperson and vice-chairperson of its standards committee are elected from the independent members of that committee; and (b) notify those electors of the qualities and experience that may be required of independent members holding such positions: reg 17. Provision is also made for the establishment of a panel to consider any applications for a vacancy as an independent member of a relevant authority: see reg 15, 16.

For these purposes 'relevant authority' means (i) a county council; (ii) a county borough council; (iii) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; (iv) a national park authority established under the Environment Act 1995 s 63: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 2 (amended by SI 2005/2929). 'Community committee member' means a member of a standards committee who is also a member of a community council within the area of the relevant authority concerned: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 2. 'Independent member' means a member of a standards committee who is not a member, an officer, or the spouse or civil partner of a member or an officer of the relevant authority concerned, any other relevant authority, or a community council: reg 2 (amended by SI 2005/3302). 'Local authority' means a county or county borough council: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 2. 'Member', unless the context otherwise requires, means (A) in the case of a local authority, an elected member of that authority, and (B) in the case of a national park authority or fire authority a member appointed to that authority under either (aa) the National Park Authorities (Wales) Order 1995; or (bb) any of the Fire Services Orders: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 2. 'Standards committee', unless the context otherwise requires, means a standards committee of a relevant authority and includes a sub-committee appointed by a standards committee of a relevant authority under the Local Government Act 2000 s 54A(1) (see PARA 242): Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 2. As to areas and authorities in Wales see PARA 37 et seq. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

31 Local Government Act 2000 s 53(11)(b). The term of office of a member of a local authority standards committee who is a member of that authority, or a community council member, is four years, or until the time of the next elections to the relevant post, (or, in the case of a member of a relevant authority which is a national park authority or fire authority, until that member's appointment as a member ceases), whichever is the shorter: see the Standards Committees (Wales) Regulations 2001, SI 2001/2283, regs 18, 18A, 19 (reg 18A added by SI 2006/1849). The term of office of a member of a standards committee who is an independent member of that committee is not less than four, nor more than six years: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 20. Provision is also made to allow the re-appointment of a member of a standards committee for one consecutive term: see regs 21, 21A, (reg 20 amended, and reg 21A added by SI 2006/1849).

32 Local Government Act 2000 s 53(11)(c). As to the appointment of chairpersons and vice-chairpersons see the Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 22.

33 Local Government Act 2000 s 53(11)(d). A member of a standards committee who is not a member of the relevant authority concerned is entitled to vote at meetings of that committee: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 23(1). A question to be decided by a standards committee must be decided by a majority of the votes cast by the members present at the meeting and voting thereon: reg 23(2). In the case of an equality of votes, the person presiding at the meeting of the standards committee has a second, casting vote: reg 23(3).

34 In the Local Government and Housing Act 1989 s 15: see PARA 375.

35 Local Government Act 2000 s 53(11)(e). A standards committee of a relevant authority in Wales is not to be regarded as a body to which the Local Government Act 1989 s 15 (see PARA 375) applies: Standards Committee (Wales) Regulations 2001, SI 2001/2283, reg 12.

36 Local Government Act 2000 s 53(11)(f). The provision which may be made by virtue of s 53(11)(f)-(i) includes provision which applies or reproduces, with or without modifications, any provisions of the Local Government Act 1972 Pt VA (ss 100A-100K) (see PARA 661 et seq): Local Government Act 2000 s 53(12). The Local Government Act 1972 ss 100A-100D, 100F, 100H, 100I, 100K, Sch 12A Pts 4-6 apply for the purposes of a standards committee of a relevant authority in Wales as if a standards committee were a principal council and with further modifications: see the Standards Committees (Wales) Regulations 2001, SI 2001/2283, regs 26, 27 (reg 26 amended by SI 2007/951).

37 Local Government Act 2000 s 53(11)(g). See also note 36.

38 Local Government Act 2000 s 53(11)(h). Minutes of the proceedings of a standards committee must be drawn up and entered in a book provided for the purpose by the proper officer of the relevant authority concerned and must be signed by the chairperson of the committee at the conclusion of that meeting or at the next following meeting of the committee: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 28(1). Such minutes must include: (1) a record of any decision made by the committee; (2) the reasons for that decision; and (3) a record of any declaration of interest by a member of the committee which is relevant to any matter decided upon by that committee during those particular proceedings: reg 28(2). See also note 36.

39 Local Government Act 2000 s 53(11)(i). See also note 36.

40 Local Government Act 2000 s 53(11)(j). Every standards committee must hold at least one meeting during every period of 12 months after 31 December 2001: Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 25(1). The monitoring officer or a representative of the monitoring officer of a relevant authority must attend every meeting of that authority's standards committee: reg 25(3). Provision is made for the establishment of a quorum: see reg 24 (substituted by SI 2006/1849).

41 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

42 Local Government Act 2000 s 53(11)(k) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 4). Every relevant authority must forthwith prepare a statement which sets out the terms of reference of its standards committee, and send that statement to the Public Services Ombudsman for Wales: see the Standards Committees (Wales) Regulations 2001, SI 2001/2283, reg 29.

UPDATE

238 Standards committees

TEXT AND NOTES 14-23--See the Standards Committee (Further Provisions) (England) Regulations 2009, SI 2009/1255.

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239. Functions of standards committees.

The general functions of a standards committee¹ of a relevant authority² are: (1) promoting and maintaining high standards of conduct by the members³ and co-opted members⁴ of the authority⁵; and (2) assisting members and co-opted members of the authority to observe the authority's code of conduct⁶. A standards committee of a relevant authority has the following specific functions: (a) advising the authority on the adoption or revision of a code of conduct⁷; (b) monitoring the operation of the authority's code of conduct⁸; and (c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct⁹. A relevant authority may arrange for its standards committee to exercise such other functions as the authority considers appropriate¹⁰.

The Secretary of State¹¹ may by regulations make provision with respect to the exercise of functions by standards committees of relevant authorities in England and police authorities in Wales¹², and the Welsh Ministers¹³ may make provision with respect to the exercise of functions by standards committees of relevant authorities in Wales other than police authorities¹⁴. The Standards Board for England¹⁵ may issue guidance with respect to the exercise of functions by standards committees of relevant authorities in England and police authorities in Wales¹⁶, and the Welsh Ministers may issue guidance with respect to the exercise of functions by standards committees of relevant authorities in Wales other than police authorities¹⁷.

- 1 As to standards committees see PARA 238.
- 2 As to the meaning of 'relevant authority' see PARA 232 note 4.
- 3 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.
- 4 As to the meaning of 'co-opted member' see PARA 232 note 3.
- 5 Local Government Act 2000 s 54(1)(a).
- 6 Local Government Act 2000 s 54(1)(b). As to a code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236. In relation to a relevant authority whose members and co-opted members are subject to mandatory provisions by virtue of s 51(5)(b) (see PARA 235), references to the authority's code of conduct are to those mandatory provisions: Local Government Act 2000 s 54(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 184(3)).
- 7 Local Government Act 2000 s 54(2)(a). As to the duty of a relevant authority to adopt a code of conduct see PARA 235.
- 8 Local Government Act 2000 s 54(2)(b). As to the application of mandatory provisions see note 6.
- 9 Local Government Act 2000 s 54(2)(c). As to the application of mandatory provisions see note 6.
- 10 Local Government Act 2000 s 54(3).
- 11 As to the Secretary of State see PARA 96.
- 12 Local Government Act 2000 s 54(4). For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1). As to the application of s 54(4) to sub-committees see PARA 242. As to regulations made under this section see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483; and the Standards Committee (England) Regulations 2008, SI 2008/1085.
- 13 As to the Welsh Ministers see PARA 97.
- 14 Local Government Act 2000 s 54(5). The provisions of s 54(5), (7) apply in relation to sub-committees of standards committees as they apply in relation to standards committees: s 56(6). As to sub-committees of standards committees see PARA 242.
- 15 As to the Standards Board for England see PARA 243.
- 16 Local Government Act 2000 s 54(6).
- 17 Local Government Act 2000 s 54(7). As to the application of s 54(7) to sub-committees see note 14.

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240. Standards committees for parish councils.

A standards committee¹ of a district council² has the same functions in relation to the parish councils for which the district council is the responsible authority³, and the members of those parish councils⁴, as the standards committee has⁵ in relation to the district council and the members of the district council⁶. A standards committee of a unitary county council⁷ has the same functions in relation to the parish councils for which the county council is the responsible authority⁸, and the members of those parish councils⁹, as the standards committee has¹⁰ in relation to the county council and the members of the county council¹¹.

In deciding whether it will be its standards committee or a sub-committee of its standards committee which is to discharge a function, a district council or unitary county council must consult the parish councils for which it is the responsible authority¹². Where a function is to be exercised by the sub-committee the number of members of the sub-committee of a standards committee of a district council or unitary county council, and the term of office of those members, are fixed by the standards committee after consultation with the parish councils for which the district council or unitary county council is the responsible authority¹³.

Where the standards committee of a district council or unitary county council discharges any of these functions, the standards committee must¹⁴: (1) include at least one member of any of the parish councils for which the district council or unitary county council is the responsible authority¹⁵; and (2) ensure that at least one person falling within head (1) above is present at any meeting of the committee when matters relating to those parish councils, or the members of those parish councils, are being considered¹⁶. Where a sub-committee of the standards committee of a district council or unitary county council discharges any of these functions, the sub-committee must¹⁷: (a) include at least one member of the standards committee who is not a member or an officer¹⁸ of that or any other relevant authority¹⁹; (b) include at least one member of any of the parish councils for which the district council or unitary county council is the responsible authority²⁰; (c) ensure that at least one person falling within head (b) is present at any meeting of the sub-committee when matters relating to those parish councils, or the members of those parish councils, are being considered²¹.

Any function which is exercisable²² by or in relation to the standards committee of a relevant authority which is a parish council is exercisable by:

- 370 (i) the standards committee of the district council or unitary county council which is the responsible authority in relation to the parish council²³; or
- 371 (ii) where that standards committee has appointed a sub-committee²⁴ with responsibility for that function, that sub-committee²⁵.

Such a function is also exercisable in relation to the standards committee of the district council or unitary county council which is the responsible authority in relation to the parish council²⁶. Any reference²⁷ to the standards committee of a relevant authority which is a parish council is to be construed accordingly²⁸.

1 As to standards committees see PARA 238.

2 As to areas and authorities in England see PARA 24 et seq.

3 Local Government Act 2000 s 55(1)(a).

4 Local Government Act 2000 s 55(1)(b). A district council or unitary county council is the responsible authority: (1) in relation to a parish council which is not a common parish council if the parish is situated within the area of the district council or county council; (2) in relation to a parish council which is a common parish council, if the parishes in the group are wholly situated within that area, or where that is not the case, if the greatest number of local government elector for the parishes in the group is situated in that area: s 55(12). As to parish councils see PARA 27 et seq. As to local government electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 73, 112.

5 Ie under the Local Government Act 2000 s 54(1), (2): see PARA 239.

6 Local Government Act 2000 s 55(1).

7 For the purposes of the Local Government Act 2000 s 55, 'unitary county council' means the council of a county in England in which there are no district councils: s 55(13). See also PARA 238.

8 Local Government Act 2000 s 55(2)(a).

9 Local Government Act 2000 s 55(2)(b).

- 10 le under the Local Government Act 2000 s 54(1), (2): see PARA 239.
- 11 Local Government Act 2000 s 55(2).
- 12 Local Government Act 2000 s 55(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 188(2)(c)). As to sub-committees of standards committees see PARA 242.
- 13 Local Government Act 2000 s 55(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 188(2)(d)). The Local Government Act 2000 s 55(5) is subject to any provision made by regulations under Local Government Act 2000 s 53(6)(a) (see PARA 238): s 55(5A) (added by the Local Government and Public Involvement in Health Act 2007 s 188(2)(e)).
- 14 Local Government Act 2000 s 55(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 188(2)(f)).
- 15 Local Government Act 2000 s 55(6)(a). As to regulations concerning the appointment of persons falling within s 55(6)(a) see PARA 238 note 18.
- 16 Local Government Act 2000 s 55(6)(b).
- 17 Local Government Act 2000 s 55(7) (added by the Local Government and Public Involvement in Health Act 2007 s 188(2)(g)).
- 18 As to the meaning of 'officer' see PARA 425 note 3.
- 19 Local Government Act 2000 s 55(7)(a) (as added: see note 17). The reference in the text to a member of the standards committee is to a member of the standards committee who falls within s 53(4)(b): see PARA 238.
- 20 Local Government Act 2000 s 55(7)(b) (as added: see note 17). As to regulations as to the appointment of persons falling within s 55(7)(b) see PARA 238 note 18.
- 21 Local Government Act 2000 s 55(7)(c) (as added: see note 17).
- 22 le by virtue of the Local Government Act 2000 ss 56-83: see PARA 241 et seq.
- 23 Local Government Act 2000 s 55(11)(a) (amended by the Local Government and Public Involvement in Health Act 2007 ss 188(2)(j)(i), 241, Sch 18 Pt 15).
- 24 Local Government Act 2000 s 55(11)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 188(2)(j)(ii)). As to the appointment of sub-committees see the Local Government Act 2000 s 54A; and PARA 242.
- 26 Local Government Act 2000 s 55(11A) (added by the Local Government and Public Involvement in Health Act 2007 s 188(2)(k)).
- 27 le any reference in Local Government Act 2000 ss 56-83: see PARA 241 et seq.
- 28 Local Government Act 2000 s 55(11B) (added by the Local Government and Public Involvement in Health Act 2007 s 188(2)(k)).

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241. Standards committees or sub-committees for community councils.

A standards committee¹ of a county council in Wales² has the same functions in relation to the community councils which are situated in the area of the county council³, and the members of those community councils⁴, as the standards committee has⁵ in relation to the county council and the members of the county council⁶. A standards committee of a county borough council

has the same functions in relation to the community councils which are situated in the area of the county borough council⁷, and in relation to the members of those community councils⁸, as the standards committee has⁹ in relation to the county borough council and the members of the county borough council¹⁰.

A standards committee of a county council or county borough council may appoint a sub-committee for the purpose of discharging these functions¹¹. In deciding whether it will be its standards committee or a sub-committee of its standards committee which is to discharge these functions, a county council or county borough council must consult the community councils which are situated in its area¹².

Any function which is exercisable¹³ by or in relation to the standards committee of a relevant authority which is a community council is exercisable by or in relation to:

- 372 (1) the standards committee of the county council or county borough council in whose area the community council is situated¹⁴; or
- 373 (2) where that standards committee has appointed a sub-committee¹⁵, that sub-committee¹⁶,

and any reference¹⁷ to the standards committee of a relevant authority which is a community council is to be construed accordingly¹⁸.

1 As to standards committees see PARA 238 et seq.

2 As to areas and authorities in Wales see PARA 37 et seq.

3 Local Government Act 2000 s 56(1)(a).

4 Local Government Act 2000 s 56(1)(b).

5 Ie under the Local Government Act 2000 s 54(1), (2): see PARA 239.

6 Local Government Act 2000 s 56(1).

7 Local Government Act 2000 s 56(2)(a).

8 Local Government Act 2000 s 56(2)(b).

9 Ie under the Local Government Act 2000 s 54(1), (2): see PARA 239.

10 Local Government Act 2000 s 56(2).

11 Local Government Act 2000 s 56(3). The reference in the text to functions is to all of the functions conferred on the standards committee by s 56. Regulations under the Local Government Act 2000 s 53(11) (see PARA 238) may make provision in relation to sub-committees appointed under s 56: s 56(5). As to sub-committees of standards committees see PARA 242.

12 Local Government Act 2000 s 56(4).

13 Ie by virtue of the Local Government Act 2000 ss 57-83: see PARA 243 et seq.

14 Local Government Act 2000 s 56(7)(a).

15 Ie under the Local Government Act 2000 s 56.

16 Local Government Act 2000 s 56(7)(b).

17 Ie any reference in the Local Government Act 2000 ss 57-83: see PARA 243 et seq.

18 Local Government Act 2000 s 56(7).

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242. Sub-committees of standards committees.

A standards committee¹ of a relevant authority² may appoint one or more sub-committees for the purpose of discharging any of the committee's functions, whether or not to the exclusion of the committee³.

The standards committee of a relevant authority in England must appoint sub-committees, each of which must be chaired by an independent member, to discharge any functions which relate to written allegations that a member failed to comply with the code of conduct⁴, or the right to request a review of a decision not to act where such an allegation has been made⁵.

1 As to standards committees see PARA 238 et seq.

2 As to the meaning of 'relevant authority' see PARA 232 note 4.

3 Local Government Act 2000 s 54A(1) (s 54A added by Local Government Act 2003 s 113(1)). The Local Government Act 2000 s 54A(1) does not apply to functions under s 56 (see PARA 241): s 54A(2) (as so added; and amended by the Local Government and Public Involvement in Health Act 2007 ss 188(1)(a), 241, Sch 18 Pt 15). A sub-committee under the Local Government Act 2000 s 54A(1) must, subject to s 55(7)(b) (see PARA 240), be appointed from among the members of the standards committee by which it is appointed: s 54A(3) (as so added; and amended by the Local Government and Public Involvement in Health Act 2007 s 188(1)(b)). As regards sub-committees appointed under s 54A(1) by a standards committee of a relevant authority in England or of a police authority in Wales (1) regulations under s 53(6)(a), (c)-(g) (see PARA 238) may make provision in relation to such sub-committees; and (2) s 53(7), (8) and (10) (see PARA 238) and 54(4), (6) (see PARA 239) apply in relation to such sub-committees as they apply in relation to standards committees: s 54A(4) (as so added). As regards sub-committees appointed under s 54A(1) by a standards committee of a relevant authority in Wales other than a police authority: (a) regulations under s 53(11) (see PARA 238) may make provision in relation to such sub-committees; and (b) s 54(5) and (7) (see PARA 239) apply in relation to such sub-committees as they apply in relation to standards committees: s 54A(5) (as so added). Subject to s 55(5) (see PARA 240) and any provision made by regulations under s 53(6)(a) or (11)(a) (as applied by s 54A) the number of members of a sub-committee under s 54A(1), and the term of office of those members, are to be fixed by the standards committee by which the sub-committee is appointed: s 54A(6) (as so added; and amended by the Local Government and Public Involvement in Health Act 2007 s 188(1)(c)). For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

If the standards committee of a relevant authority in England appoints sub-committees to discharge functions under the Standards Committee (England) Regulations 2008, SI 2008/1085, regs 17-20 (see PARA 261-263), those sub-committees must be chaired by an independent member: reg 6(2). As to the meaning of 'independent member' see PARA 238 note 18.

A sub-committee appointed by a standards committee of a relevant authority in Wales must consist of not less than three members: see the Standards Committee (Wales) Regulations 2001, SI 2001/2283, reg 3(2) (substituted by SI 2006/1849).

4 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 6(1)(a). The functions referred to in the text are those specified in the Local Government Act 2000 s 57A: see PARA 247.

5 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 6(1)(b). The functions referred to in the text are those specified in the Local Government Act 2000 s 57B: see PARA 247.

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C. INVESTIGATION AND DETERMINATION

(A) INVESTIGATIONS AND DETERMINATIONS IN ENGLAND

243. Standards Board for England.

The Local Government Act 2000 established a body corporate known as the Standards Board for England¹, which consists of not less than three members appointed by the Secretary of State². A person is disqualified for being appointed as, or for being, a member of the Standards Board if he is disqualified for being or becoming, whether by election or otherwise, a member of a local authority³ or a member of a relevant authority⁴. The Secretary of State must appoint one of the members of the Standards Board as chairman and another as deputy chairman⁵.

The Standards Board has the functions conferred on it by Part III of the Local Government Act 2000⁶ and such other functions as may be conferred on it by order made by the Secretary of State⁷. In exercising its functions, the Standards Board must have regard to the need to promote and maintain high standards of conduct by members⁸ and co-opted members⁹ of relevant authorities in England¹⁰.

The Standards Board:

- 374 (1) must appoint employees known as ethical standards officers¹¹ who have the functions conferred on them by Part III of the Local Government Act 2000¹²;
- 375 (2) may issue guidance to ethical standards officers with respect to the exercise by those officers of their functions¹³;
- 376 (3) may issue guidance to relevant authorities in England and police authorities¹⁴ in Wales on matters relating to the conduct of members and co-opted members of such authorities¹⁵;
- 377 (4) may issue guidance to relevant authorities in England and police authorities in Wales in relation to the qualifications or experience which monitoring officers should possess¹⁶; and
- 378 (5) may arrange for any such guidance to be made public¹⁷;
- 379 (6) may issue guidance to monitoring officers and standards committees¹⁸ in respect of matters referred by an ethical standards officer¹⁹, or a Public Ombudsman in Wales²⁰.

The Standards Board may do such things and enter into such transactions as are calculated to facilitate, or are incidental or conducive to, the exercise of the functions of²¹: (a) the Standards Board²²; (b) its ethical standards officers²³; (c) the president, deputy president or any tribunal of the Adjudication Panel for England²⁴; (d) the standards committee of a relevant authority in England²⁵; or (e) the monitoring officer of a relevant authority in England²⁶.

The Standards Board may regulate its own procedure, and in particular may specify a quorum for meetings²⁷. A member of the Standards Board who is directly or indirectly interested²⁸ in any matter brought up for consideration at a meeting of the Standards Board must: (i) disclose the nature of his interest to the meeting²⁹; and (ii) not take part in any deliberation or decision of the Standards Board with respect to that matter³⁰.

The application of the seal of the Standards Board³¹ is to be authenticated by the signature of the chairman³² or of some other member who has been authorised by the Standards Board, whether generally or specially, for that purpose³³.

1 Local Government Act 2000 s 57(1). As to investigations in Wales see PARA 267 et seq. The Standards Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown: s 57(6), Sch 4 para 1(1). As to immunities and privileges see **CROWN PROCEEDINGS AND CROWN PRACTICE**.

The members and employees of the Standards Board are not to be regarded as civil servants, and the property of the Standards Board is not to be regarded as property of, or held on behalf of, the Crown: Sch 4 para 1(2). As to employees of the Standards Board see PARA 244. As to Crown property see **CROWN PROPERTY**.

2 Local Government Act 2000 s 57(2). As to the Secretary of State see PARA 96.

3 For the purposes of the Local Government Act 2000 Sch 4 para 3, 'local authority' has the meaning given by the Local Government Act 1972 s 270(1) (see PARA 23): Local Government Act 2000 Sch 4 para 3(4).

4 Local Government Act 2000 Sch 4 para 3(1). A person who is disqualified under Pt III (ss 49-83) for being or becoming a member of a relevant authority is also disqualified: (1) for being or becoming a member of any committee, sub-committee, joint committee or joint sub-committee of the authority; and (2) if the authority is one to which Pt II (ss 10-48) applies, for being or becoming a member of an executive of the authority: s 83(11). As to disqualification for being elected or being a member of a local authority see PARA 119. As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11. As to the meaning of 'relevant authority' see PARA 232 note 4. As to the meaning of 'committee of a relevant authority' see PARA 232 note 3. As to committees and sub-committees generally see PARA 241 et seq. As to the meaning of 'joint committee or joint sub-committee of a relevant authority' see PARA 232 note 3. As to joint committees generally see PARA 380. As to executive arrangements see PARA 303 et seq.

5 Local Government Act 2000 Sch 4 para 4. Subject to the following provisions, a person holds and vacates office as chairman, deputy chairman or member of the Standards Board in accordance with the terms of his appointment: Sch 4 para 5(1). A chairman, deputy chairman or member of the Standards Board may at any time resign his office by notice in writing addressed to the Secretary of State: Sch 4 para 5(2). The Secretary of State may remove a chairman, deputy chairman or member of the Standards Board from office if the Secretary of State considers that: (1) that person is unable or unfit to discharge the functions of his office; or (2) the person has not complied with the terms of his appointment: Sch 4 para 5(3). Where a chairman or deputy chairman of the Standards Board ceases to be a member of the Standards Board he also ceases to be chairman or deputy chairman: Sch 4 para 5(4). A person who ceases, otherwise than by virtue of Sch 4 para 5(3), to be a chairman, deputy chairman or member of the Standards Board is eligible for re-appointment: Sch 4 para 5(5).

6 In the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

7 Local Government Act 2000 s 57(3). As to regulations made under s 57(3) see the Standards Board for England (Functions) Order 2004, SI 2004/2618; and notes 18-20.

The Standards Board may delegate any of its functions to a committee or sub-committee established by the Board, an individual member of the Board, or an officer or servant of the Board: Local Government Act 2000 Sch 4 para 9A (added by the Local Government Act 2003 s 112).

8 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

9 As to the meaning of 'co-opted member' see PARA 232 note 3.

10 Local Government Act 2000 s 57(4).

11 A person may not be employed as an ethical standards officer if: (1) he is disqualified for being, or becoming, whether by election or otherwise, a member of a local authority or a member of a relevant authority; (2) he is a member or an officer of a relevant authority; or (3) he is a member of a committee, sub-committee, joint committee or joint sub-committee of a relevant authority: Local Government Act 2000 Sch 4 para 3(2). An ethical standards officer is treated as being in breach of the terms of his employment if: (a) he becomes disqualified for being, or becoming, whether by election or otherwise, a member of a local authority or a member of a relevant authority; (b) he becomes a member or an officer of a relevant authority; or (c) he becomes a member of a committee, sub-committee, joint committee or joint sub-committee of a relevant authority: Sch 4 para 3(3).

12 Local Government Act 2000 ss 57(5)(a), 83(1).

13 Local Government Act 2000 s 57(5)(aa) (added by the Local Government and Public Involvement in Health Act 2007 s 190(1)).

14 For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq); Local Government Act 2000 s 83(1).

15 Local Government Act 2000 s 57(5)(b).

16 Local Government Act 2000 s 57(5)(c). Any function which by virtue of Pt III is exercisable by or in relation to the monitoring officer of a relevant authority which is a parish council is to be exercisable by or in relation to the monitoring officer of the district council or unitary county council which is the responsible authority in relation to the parish council; and any reference to the monitoring officer of a relevant authority which is a parish council is to be construed accordingly: s 83(12). The provisions of s 55(12), (13) (standards committees or sub-committees for parish councils) (see PARA 240), apply for the purposes of s 83(12) as they apply for the purposes of s 55 (see PARA 240): s 83(16). Any function which by virtue of Pt III is exercisable by or in relation to the monitoring officer of a relevant authority which is a community council is to be exercisable by or in relation to the monitoring officer of the county council or county borough council in whose area the community council is situated; and any reference to the monitoring officer of a relevant authority which is a community council is to be construed accordingly: s 83(13). The monitoring officer may delegate his functions under Part III in relation to matters referred to him under s 57A (see PARA 247), s 60(2) or (3) (see PARA 251), s 64(2) or (4) (see PARA 255), s 70(4) or (5) (see PARA 268) or s 71(2) or (4) (see PARA 273): s 82A(1) (s 82A added by the Local Government Act 2003 s 113(2); s 82A(1) amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (9)). Where the monitoring officer considers that in a particular case he himself ought not to perform any of those functions, they must be performed personally by a person nominated for the purpose by the monitoring officer: Local Government Act 2000 s 82A(2) (as so added). Where a deputy nominated by the monitoring officer (under the Local Government and Housing Act 1989 s 5(7) (see PARA 429)) considers that in a particular case he himself ought not to perform the particular functions and which, by reason of the absence or illness of the monitoring officer, would but for this provision fall to be performed by the deputy, those particular functions must, while the monitoring officer continues to be unable to act by reason of absence or illness, be performed in that case personally by a person nominated for the purpose by the deputy: s 82A(3) (as so added). Where functions are to be performed by a person nominated under those provisions who is an officer of the relevant authority, the authority must provide the officer with such staff, accommodation and other resources as are, in the officer's opinion, sufficient to allow those functions to be performed: s 82A(4) (as so added). If that person is not an officer of the relevant authority, the authority must pay the person a reasonable fee for performing the functions, reimburse expenses properly incurred by the person in performing the functions (but only to the extent that the amount of the expenses is reasonable) and provide the person with such staff, accommodation and other resources as are reasonably necessary for the person's performance of the functions: s 82A(5) (as so added).

As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to monitoring officers generally see PARA 429.

17 Local Government Act 2000 s 57(5)(d).

18 Ie monitoring officers and standards committees of a relevant authority in England and a Police Authority in Wales: see the Standards Board for England (Functions) Order 2004, SI 2004/2618, art 2.

19 Ie referred under the Local Government Act 2000 s 60(2), (3) or 64(2) (see PARAS 251, 255).

20 Standards Board for England (Functions) Order 2004, SI 2004/2618, art 3. The matters referred by the Public Ombudsman for Wales to which art 3 applies are those referred under the Local Authority Act 2000 ss 70(4), (5) or 71(2) (see PARAS 268, 273).

21 Local Government Act 2000 Sch 4 para 2(1). The power under Sch 4 para 2(1) includes power to acquire and dispose of land: Sch 4 para 2(2). Nothing in Sch 4 para 2(2) affects the generality of the power under Sch 4 para 2(1): Sch 4 para 2(3).

22 Local Government Act 2000 Sch 4 para 2(1)(a).

23 Local Government Act 2000 Sch 4 para 2(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 ss 190(2)(a), 241, Sch 18 Pt 15). As to the functions of ethical standards officers see PARA 148.

24 Local Government Act 2000 Sch 4 para 2(1)(c). As to adjudication panels see PARA 278.

25 Local Government Act 2000 Sch 4 para 2(1)(d) (Sch 4 para 2(1)(d), (e) added by the Local Government and Public Involvement in Health Act 2007 s 190(2)(b)).

26 Local Government Act 2000 Sch 4 para 2(1)(e) (as added: see note 25).

27 Local Government Act 2000 Sch 4 para 9(1). The validity of any proceedings of the Standards Board is not affected by: (1) any vacancy among its members or in the office of chairman or deputy chairman; (2) any defect in the appointment of any person as chairman, deputy chairman or member; or (3) a contravention of Sch 4 para 3 or Sch 4 para 10: Sch 4 para 9(2).

28 A member is taken to be 'interested', in particular, where the matter being considered is a failure to comply with the code of conduct of a relevant authority and he is, or has been: (1) a member or officer of that authority; or (2) a member of a committee, sub-committee, joint committee or joint sub-committee of that authority: Local Government Act 2000 Sch 4 para 10(2). As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the authority's code of conduct see PARA 236.

29 Local Government Act 2000 Sch 4 para 10(1)(a).

30 Local Government Act 2000 Sch 4 para 10(1)(b).

31 A document purporting to be duly executed under the seal of the Standards Board or to be signed on its behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed: Local Government Act 2000 Sch 4 para 16.

32 Local Government Act 2000 Sch 4 para 15(a).

33 Local Government Act 2000 Sch 4 para 15(b).

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244. Employees of the Standards Board for England.

The Standards Board for England¹ may appoint a chief executive, but any such appointment requires the consent of the Secretary of State². The Standards Board may in addition to appointing a chief executive and ethical standards officers³, appoint such employees as it considers necessary for the purpose of enabling the Standards Board and its ethical standards officers to exercise their functions⁴. The Standards Board may also appoint such employees as it considers necessary for the purpose of enabling the president, deputy president and any tribunals of the Adjudication Panel for England⁵ to exercise their functions⁶.

No person employed by the Standards Board may be employed for the purposes of both⁷ assisting any ethical standards officer in the conduct of an investigation⁸ and enabling the president, deputy president and any tribunals of the Adjudication Panel for England to exercise their functions⁹.

Employees of the Standards Board are appointed¹⁰ on such terms and conditions of service as the Standards Board, with the approval of the Secretary of State, thinks fit¹¹.

1 As to the Standards Board for England see PARA 243.

2 Local Government Act 2000 s 57(6), Sch 4 para 6(1). As to the Secretary of State see PARA 96. The first appointment to the position of chief executive may be made by the Secretary of State after consultation with the chairman, or chairman designate, of the Standards Board: Sch 4 para 6(2).

3 As to the meaning of 'ethical standards officer' see PARA 243.

4 Local Government Act 2000 Sch 4 para 6(3). As to the functions of ethical standards officers see PARA 250.

5 As to adjudication panels see PARA 278.

6 Local Government Act 2000 Sch 4 para 6(4).

7 Local Government Act 2000 Sch 4 para 6(5).

8 Local Government Act 2000 Sch 4 para 6(5)(a). The investigation referred to in the text is an investigation under s 59: see PARA 250.

9 Local Government Act 2000 Sch 4 para 6(5)(b).

10 Is subject to the Local Government Act 2000 Sch 4 para 7: see PARA 245.

11 Local Government Act 2000 Sch 4 para 6(6).

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245. Remuneration of members and employees of the Standards Board for England.

The Standards Board for England¹ may pay any member of the Standards Board² such remuneration or allowances, if any, as the Secretary of State³ may determine⁴ and may pay any employee of the Standards Board⁵ such remuneration or allowances as the Secretary of State may determine⁶. The Standards Board may also: (1) pay such pensions, allowances or gratuities⁷ as the Secretary of State may determine to or in respect of any persons who have been or are members or employees of the Standards Board⁸; (2) make such payments as the Secretary of State may determine towards the provision of pensions, allowances or gratuities to or in respect of any such persons⁹; (3) provide and maintain such schemes, whether contributory or not, as the Secretary of State may determine for the payment of pensions, allowances or gratuities to or in respect of any such persons¹⁰. The Standards Board may pay any member of the Adjudication Panel for England¹¹ such remuneration, fees or allowances, if any, as the Secretary of State may determine¹².

1 As to the Standards Board for England see PARA 243 et seq.

2 As to members of the Standards Board see PARA 243.

3 As to the Secretary of State see PARA 96.

4 Local Government Act 2000 s 57(6), Sch 4 para 7(1)(a).

5 As to employees of the Standards Board see PARA 244.

6 Local Government Act 2000 Sch 4 para 7(1)(b).

7 Any reference in the Local Government Act 2000 Sch 4 para 7(2) to pensions, allowances or gratuities to or in respect of any persons who have been or who are members or employees of the Standards Board includes pensions, allowances or gratuities by way of compensation to or in respect of any members or employees of the Standards Board who cease to hold office or suffer loss of office or employment: Sch 4 para 7(3).

8 Local Government Act 2000 Sch 4 para 7(2)(a).

9 Local Government Act 2000 Sch 4 para 7(2)(b).

10 Local Government Act 2000 Sch 4 para 7(2)(c).

11 As to adjudication panels see PARA 278.

12 Local Government Act 2000 Sch 4 para 8.

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246. Finance, accounts and annual report of the Standards Board for England.

The Secretary of State¹ must pay the Standards Board for England² in respect of each financial year³ such amount as he determines⁴ to be the amount required for⁵: (1) the performance during that year of the functions of the Standards Board⁶; and (2) the performance during that year of the functions of its ethical standards officers⁷.

The Standards Board must keep proper accounts and records in relation to the accounts⁸, and must prepare in respect of each financial year a statement of accounts in such form as the Secretary of State may, with the approval of the Treasury, direct⁹. The Standards Board must send to the Comptroller and Auditor General¹⁰ a copy of the statement of accounts in respect of each financial year¹¹ as soon as reasonably practicable after the end of the financial year to which the statement relates¹². The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent to him by the Standards Board and must lay a copy of the statement and his report on it before each House of Parliament¹³.

As soon as possible after the end of each financial year, the Standards Board must publish a report on the discharge of its functions during that year¹⁴. The Standards Board must send a copy of each annual report to the Secretary of State who must lay a copy of the report before each House of Parliament¹⁵.

1 As to the Secretary of State see PARA 96.

2 As to the Standards Board for England see PARA 243 et seq.

3 For the purposes of the Local Government Act 2000 s 57(6), Sch 4 paras 12-14, 'financial year' means: (1) the period beginning with the date on which the Standards Board is established and ending with the next 31 March following that date; and (2) each successive period of 12 months ending with 31 March: see Sch 4 paras 12(3), 13(5), 14(3).

4 Any determination under the Local Government Act 2000 Sch 4 para 12(1) requires the approval of the Treasury: Sch 4 para 12(2). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Local Government Act 2000 Sch 4 para 12(1).

6 Local Government Act 2000 Sch 4 para 12(1)(a).

7 Local Government Act 2000 Sch 4 para 12(1)(b). As to the meaning of 'ethical standards officer' see PARA 243. As to the functions of ethical standards officers see PARA 250.

8 Local Government Act 2000 Sch 4 para 13(1)(a).

9 Local Government Act 2000 Sch 4 para 13(1)(b).

10 As to Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

11 This applies to each financial year ending on or after 31 March 2005: Local Government Act 2000 Sch 4 para 13(4A) (as added: see note 12). The accounts of the Standards Board in respect of financial years ending on or before 31 March 2004 must be audited by persons appointed for the purpose for each such financial year by the Secretary of State: Sch 4 para 13(2) (amended by SI 2003/1326). A copy of any accounts so audited and of the report made in respect of those accounts by the persons appointed to audit them must be sent to the Secretary of State as soon as reasonably practicable after the report is received by the Standards Board: Local

Government Act 2000 Sch 4 para 13(3). The Secretary of State must lay before Parliament a copy of any accounts or report sent to him under this provision: Sch 4 para 13(4).

12 Local Government Act 2000 Sch 4 para 13(4A) (para 13(4A), (4B) added by SI 2003/1326).

13 Local Government Act 2000 Sch 4 para 13(4B) (as added: see note 12).

14 Local Government Act 2000 Sch 4 para 14(1).

15 Local Government Act 2000 Sch 4 para 14(2).

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247. Written allegations.

A person may make a written allegation to the standards committee¹ of a relevant authority in England² that a member³ or co-opted member⁴, or former member or co-opted member, of that authority has failed, or may have failed, to comply with the authority's code of conduct⁵.

Where a standards committee receives such an allegation it must: (1) refer the allegation to the monitoring officer⁶ of the relevant authority concerned⁷; (2) refer the allegation to the Standards Board for England⁸; or (3) decide that no action should be taken in respect of the allegation⁹.

Where such an allegation has been made the standards committee must take reasonable steps to give a written summary of the allegation to the person who is its subject¹⁰. If the standards committee, on an initial assessment¹¹, on review¹² or following a reference from the Standards Board for England¹³, makes a decision that no action should be taken in respect of the allegation, it must take reasonable steps to give notice in writing to the person who is the subject of the allegation of the decision and the reasons for that decision¹⁴. Where the standards committee receives a request for review of a decision not to act¹⁵, it must take reasonable steps to give the subject notice in writing of the request¹⁶.

The Standards Board for England may issue guidance with respect to the exercise of these functions by standards committees of relevant authorities in England¹⁷, and may give a direction to such standards committees with respect to the exercise of these functions¹⁸.

A standards committee's functions with regard to written allegations¹⁹ may be suspended by direction of the Standards Board for England²⁰.

1 As to the standards committee see PARA 243. The functions of a standards committee may be suspended by the Standards Board for England: see the Local Government Act 2000 ss 57A(5), 57D; and PARAS 247, 248.

2 As to meaning of 'relevant authority' in England see PARA 232 note 4.

3 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

4 As to the meaning of 'co-opted member' see PARA 232 note 3.

5 Local Government Act 2000 s 57A(1) (ss 57A-57C added by the Local Government and Public Involvement in Health Act 2007 s 185). As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

Every standards committee must publish in such manner as it considers appropriate, details of the address or addresses to which written allegations should be sent, and must take reasonable steps to ensure that such details as are published continue to be brought to the attention of the public and that any changes to those

details are promptly published: see the Standards Committee (England) Regulations 2008, SI 2008/1085 reg 10(1), (2). Every standards committee must publish in such manner as it considers appropriate, details of the procedures it will follow in relation to any written allegation: reg 10(3). In complying with these obligations, every standards committee must take account of any relevant guidance issued by the Standards Board: reg 10(4).

The Local Government Act 2000 s 58, the Relevant Authorities (Standards Committee) Regulations 2001, SI 2001/2812, and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483, as they stood immediately before 8 May 2008 continue to have effect in relation to any allegation in writing received before that date by the Standards Board for England that a member or co-opted member (or former member or former co-opted member) of a relevant authority in England has failed, or may have failed, to comply with the authority's code of conduct: Local Government and Public Involvement in Health Act 2007 (Commencement No 6 and Transitional and Saving Provision) Order 2008, SI 2008/1265, art 3. Where the Standards Board considers that a written allegation received before 8 May 2008 should be investigated, it must refer the case to one of its ethical standards officers: s 58(2) (as originally enacted). Where the Standards Board considers that a written allegation should not be investigated, it must take reasonable steps to give written notification to the person who made the allegation of the decision and the reasons for the decision: s 58(3) (as originally enacted).

6 As to monitoring officers see PARA 429.

7 Local Government Act 2000 s 57A(2)(a) (as added: see note 5). As to matters referred to monitoring officers see s 66: and PARA 258. Where an allegation is in respect of a person who is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority, the standards committee may, if it thinks it more appropriate than referring it to the authority concerned, refer the allegation to the monitoring officer of that other relevant authority: s 57A(3) (as so added). Section 57A(2)-(4) is subject to any direction under s 57D (see PARA 248): s 57A(5) (as so added).

Provision is made for the referral of matters to a monitoring officer for steps other than an investigation, and for investigation: see the PARA 259. A monitoring officer may, where prescribed circumstances apply, refer a matter sent to him for investigation back to the standards committee concerned: see PARA 260.

8 Local Government Act 2000 s 57A(2)(b) (as added: see note 5). As to the Standards Board for England see PARA 243 et seq.

9 Local Government Act 2000 s 57A(2)(c) (as added: see note 5). If the standards committee decides that no action should be taken, it must take reasonable steps to give notice in writing, to the person who made the allegation, of the decision and the reasons for the decision: s 57A(4) (as so added).

Where a standards committee decides that no action should be taken in respect of an allegation, the person who made the allegation may make a request to the standards committee for that decision to be reviewed: s 57B(1), (2) (as added: see note 5). The request must be in writing and may not be made after 30 days beginning with the date of the notice under s 57A(4): s 57B(3) (as added: see note 5). Where such a request is received by a standards committee s 57A(2)-(4) again apply, and the committee must make a reference under s 57A(2)(a) or (b) or (3), or a decision under s 57A(2)(c), within three months beginning with the date it received the request: s 57B(4) (as added: see note 5). If, by virtue of the above provision, a decision is made under s 57A(2) that no action should be taken in respect of an allegation, s 27B does not apply in relation to that decision: s 57B(5) (as added: see note 5). Section 57B(4) is subject to any direction under s 57D: s 57B(6) (as added: see note 5).

10 Local Government Act 2000 s 57C(1), (2) (as added: see note 5). The Secretary of State may by regulations: (1) provide that in prescribed circumstances the duty under s 57C(2) does not arise at the time the standards committee receives the allegation; and (2) make provision for, in relation to cases where that duty has been so limited, as to when it does arise: s 57C(7).

The duty in s 57C(2) does not arise at the time the standards committee receives the allegation, if the standards committee determines that to give a written summary would be contrary to the public interest or would prejudice any person's ability to investigate the allegation: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 11(1). In reaching such a determination the standards committee must take account of any guidance issued by the Standards Board and may take account of any advice received from the monitoring officer or any ethical standards officer concerned: reg 11(2). Where the duty does not arise at the time the standards committee receives an allegation, by virtue of such a determination the standards committee must take reasonable steps to give a written summary of the allegation to the person who is the subject of that allegation when the monitoring officer or ethical standards officer has advised the standards committee that it would no longer be contrary to the public interest or prejudicial to any investigation, and, in any event, before any consideration of any report or recommendation from a monitoring officer or ethical standards officer relating to that allegation: reg 11(3). Nothing in the foregoing prevents a monitoring officer from notifying the subject of an allegation that an allegation has been made; or the standards committee from giving the subject of an allegation some details of the allegation if the standards committee is of the opinion that disclosure of those details would not be contrary to the public interest and would not prejudice any investigation: reg 11(4).

As to ethical standards officers and the Standards Board for England see PARA 243.

11 le under the Local Government Act 2000 s 57A(2): s 57C(3) (as added: see note 5).

12 le under the Local Government Act 2000 s 57B(4): s 57C(3), (5) (as added: see note 5).

13 le under the Local Government Act 2000 s 58(3): s 57C(3), (5) (as added: see note 5).

14 Local Government Act 2000 s 57C(3), (5) (as added: see note 5).

15 le under the Local Government Act 2000 s 57B: s 57C(4) (as added: see note 5).

16 Local Government Act 2000 s 57C(4) (as added: see note 5).

17 See the Local Government Act 2000 s 57A(6)(a) (as added: see note 5). The guidance may be issued without prejudice to s 54(6): see PARA 239.

18 See the Local Government Act 2000 s 57A(6)(b) (as added: see note 5).

19 le under the Local Government Act 2000 ss 57A(2)-(4), 57B(2), 57C(2)-(4).

20 See the Local Government Act 2000 s 57A(5), 57B(6), 57C(6) (as added: see note 5). As to the power to suspend a standards committee's functions see the Local Government Act 2000 s 57D; and PARA 248.

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248. Power to suspend functions of standards committee.

In such circumstances as may be prescribed¹, the Standards Board for England² may direct that, until such time as the direction may be revoked, standards committee functions with regard to written allegations³ do not apply to the standards committee of a specified authority⁴ in relation to relevant allegations⁵ and relevant requests⁶ and the standards committee must refer any such allegations or requests to a specified body⁷.

The Secretary of State may by regulations make provision⁸:

380 (1) for prescribed provisions of or made under Local Government Act 2000 Pt III⁹ to apply, with or without modifications, where an allegation or request has been referred by reason of a direction (including where it has been referred and subsequently the direction is revoked)¹⁰;

381 (2) prescribing the circumstances in which the power to revoke a direction¹¹ is exercisable¹²;

382 (3) with respect to the procedure to be following (including the publicity to be given) where a direction has been made or revoked¹³;

383 (4) modifying the relevant provisions with regard to the conduct of an investigation by a local commissioner¹⁴ or the Public Services Ombudsman for Wales¹⁵ in relation to any relevant case¹⁶;

The Standards Board for England may issue guidance or any direction in connection with the foregoing provisions¹⁷.

- 1 le prescribed by regulations made by the Secretary of State: Local Government Act 2000 s 57D(8) (as added: see note 6).
- 2 As to the Standards Board for England see PARA 243 et seq.
- 3 le under the Local Government Act 2000 ss 57A(2)-(4), 57B(4) and 57C(2)-(4): see PARA 247. As to standards committees see PARA 238.
- 4 le specified in the direction: Local Government Act 2000 s 57D(8) (as added: see note 6).
- 5 An allegation is relevant if it is received after the direction is given or was received before then but the standards committee has not made a referral or a decision under s 57A(2) (see PARA 247) in respect of it: Local Government Act 2000 s 57D(3) (as added: see note 6). 'Received' means received under s 57A or received on a reference back to the standards committee under s 58 (see PARA 249) or regulations under s 66 (see PARA 258): s 57D(5) (as so added).
- 6 Local Government Act 2000 s 57D(1)(a) (s 57D added by the Local Government and Public Involvement in Health Act 2007 s 185). A request is relevant if it is a request to review a decision not to act under s 57B (see PARA 247) which is received after the direction is given or was received before then but the standards committee has not made a referral or a decision in respect of it: Local Government Act 2000 s 57D(4) (as so added).
- 7 Local Government Act 2000 s 57D(1)(b) (as added: see note 6).
- 8 Local Government Act 2000 s 57D(6) (as added: see note 6).
- 9 le the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.
- 10 Local Government Act 2000 s 57D(6)(a) (as added: see note 6).
- 11 le a direction under the Local Government Act 2000 s 57D: s 57D(6)(b) (as added: see note 6).
- 12 Local Government Act 2000 s 57D(6)(b) (as added: see note 6).
- 13 Local Government Act 2000 s 57D(6)(c) (as added: see note 6).
- 14 le the Local Government Act 2000 s 67(2) (see PARA 266). As to local commissioners see PARA 839.
- 15 le the Local Government Act 2000 s 67(2A) (see PARA 266). As to the Public Services Ombudsman for Wales see PARA 267 et seq.
- 16 Local Government Act 2000 s 57D(6)(d), (e) (as added: see note 6). A relevant case is one where the local commissioner or Public Services Ombudsman is of the opinion specified in s 67(2) or (2A) respectively: see PARA 266.
- 17 Local Government Act 2000 s 57D(7) (as added: see note 6).

UPDATE

248 Power to suspend functions of standards committee

TEXT AND NOTES--See the Standards Committee (Further Provisions) (England) Regulations 2009, SI 2009/1255.

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249. Allegations referred to the Standards Board for England.

Where an allegation is referred¹ to the Standards Board for England², it must refer the case to one of its ethical standards officers³ for investigation⁴, decide that no action should be taken in respect of the allegation⁵, or refer the allegation back to the standards committee of the relevant authority concerned⁶. If the Standards Board decides that no action should be taken it must take reasonable steps to give notice in writing of the decision and the reasons for that decision to the person who made the allegation and the person who was the subject of the investigation⁷.

1 le under the Local Government Act 2000 s 57A(2): see PARA 247.

2 As to the Standards Board for England see PARA 243 et seq.

3 As to the meaning of 'ethical standards officer' see PARA 243.

4 Local Government Act 2000 s 58(1)(a) (s 58 substituted by the Local Government and Public Involvement in Health Act 2007 s 185). Ethical standards officers conduct investigations under the Local Government Act 2000 s 59: see PARA 250.

5 Local Government Act 2000 s 58(1)(b) (as substituted: see note 4).

6 Local Government Act 2000 s 58(1)(c) (as substituted: see note 4). On such a reference back s 57A(2)-(4) (see PARA 247) apply to the standards committee but without the power to refer the allegation to the Standards Board: s 58(3) (as so substituted). This is subject to any direction made by the Standards Board under s 57D (see PARA 248): s 58(4) (as so substituted).

7 Local Government Act 2000 s 58(2) (as substituted: see note 4).

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250. Functions of ethical standards officers.

The functions of ethical standards officers¹ are to investigate²: (1) cases referred to them by the Standards Board for England³; and (2) other cases in which any ethical standards officer considers that a member⁴ or co-opted member⁵, or former member or co-opted member, of a relevant authority⁶ in England has failed, or may have failed, to comply with the authority's code of conduct⁷, and which have come to the attention of any ethical standards officer as a result of an investigation under head (1) above⁸. The Standards Board may make arrangements in relation to the assignment of investigations under this provision to particular ethical standards officers⁹.

The purpose of an investigation is to determine which of the following findings is appropriate¹⁰:

384 (a) that there has been no failure to comply with the code of conduct of the relevant authority concerned¹¹;

385 (b) that there has been such a failure to comply but no action needs to be taken¹²;

386 (c) that the matters which are the subject of the investigation should be referred to the monitoring officer¹³ of the relevant authority concerned¹⁴; or

387 (d) that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England¹⁵ for adjudication by a tribunal¹⁶.

For the purposes of the law of defamation¹⁷, any statement, whether written or oral, made by an ethical standards officer in connection with the exercise of his functions is absolutely privileged¹⁸.

1 As to the meaning of 'ethical standards officer' see PARA 243.

2 Local Government Act 2000 s 59(1).

3 Local Government Act 2000 s 59(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 191(1)(a)). The reference in the text is to cases referred to the Standards Board under the Local Government Act 2000 s 58(1): see PARA 249. In relation to any case referred to the Standards Board before 1 April 2008, s 59(1)(a) will continue to apply in its unamended form, that is, cases referred under s 58(2): see s 58(1); and the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 7(3). As to the Standards Board for England see PARA 243.

4 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

5 As to the meaning of 'co-opted member' see PARA 232 note 3.

6 As to the meaning of 'relevant authority' see PARA 232 note 4.

7 As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

8 Local Government Act 2000 s 59(1)(b).

9 Local Government Act 2000 s 59(2).

10 Local Government Act 2000 s 59(3). As to reports of findings see PARA 255.

11 Local Government Act 2000 s 59(4)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 191(1)(b)). In respect of cases referred to the Standards Board before 1 April 2008, the purpose of the investigation is to determine, under head (a) of the text, that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned: see the Local Government Act 2000 s 59(4)(a); and the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 7(3).

12 Local Government Act 2000 s 59(4)(b) (substituted by the Local Government and Public Involvement in Health Act 2007 s 191(1)(c)). In respect of cases referred to the Standards Board before 1 April 2008, the finding is that no action needs to be taken in respect of the matters which are the subject of the investigation: see the Local Government Act 2000 s 59(4)(b); and the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 7(3).

13 As to monitoring officers see PARA 429.

14 Local Government Act 2000 s 59(4)(c). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, the reference in s 59(4)(c) to the monitoring officer of the relevant authority concerned is treated as a reference either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority, and accordingly an ethical standards officer who reaches a finding under s 59(4)(c) must decide to which of those monitoring officers to refer the matters concerned: s 59(5).

15 As to adjudication panels see PARA 278.

16 Local Government Act 2000 s 59(4)(d). The tribunal referred to in the text is a tribunal falling within s 76(1): see PARA 279.

17 As to the law of defamation generally see **LIBEL AND SLANDER**.

18 Local Government Act 2000 s 57(6), Sch 4 para 11. As to absolute privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 97.

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251. Investigations by ethical standards officers.

An ethical standards officer¹ may arrange for any person to assist him in the conduct of an investigation². An ethical standards officer to whom an investigation is assigned may³: (1) cease the investigation at any stage before its completion⁴; and (2) refer the matters which are the subject of the investigation to the monitoring officer⁵ of the relevant authority⁶ concerned⁷.

Where a person is no longer a member⁸ or co-opted member⁹ of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, an ethical standards officer may, if he thinks it more appropriate than making a reference as mentioned in head (2) above, refer the matters which are the subject of the investigation to the monitoring officer of that other relevant authority¹⁰. An ethical standards officer may not at any time conduct an investigation in relation to a member or co-opted member, or former member or co-opted member, of a relevant authority if, within the period of five years ending with that time, the ethical standards officer has been a member or an officer of the authority or a member of any committee, sub-committee¹¹, joint committee or joint sub-committee¹² of the authority¹³.

An ethical standards officer who is directly or indirectly interested in any matter which is, or is likely to be, the subject of an investigation¹⁴ must disclose the nature of his interest to the Standards Board for England¹⁵, and may not take part in any such investigation¹⁶.

1 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

2 Local Government Act 2000 s 60(1). The reference in the text to an investigation is to an investigation under s 59: see PARA 250. The Local Government Act 2000 s 60 also applies, with modifications, to relevant authorities in Wales: see PARA 269.

3 Local Government Act 2000 s 60(2). See also the Standards Committee (England) Regulations 2008, SI 2008/1085; and PARA 247.

4 Local Government Act 2000 s 60(2)(a).

5 As to monitoring officers see PARA 429.

6 As to the meaning of 'relevant authority' see PARA 232 note 4.

7 Local Government Act 2000 s 60(2)(b). An ethical standards officer who refers any matters to the monitoring officer of a relevant authority under s 60(2) may give directions to the monitoring officer as to the way in which those matters are to be dealt with: s 66(6). Provision is made for the referral of matters to a monitoring officer for steps other than an investigation, and for investigation: see PARA 259. As to monitoring officers see PARA 429.

8 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

9 As to the meaning of 'co-opted member' see PARA 232 note 3.

10 Local Government Act 2000 s 60(3). Provision is made for the referral of matters to a monitoring officer for steps other than an investigation, and for investigation: see PARA 259.

11 As to the meaning of 'committee of a relevant authority' see PARA 232 note 3. As to committees and sub-committees generally see PARA 371 et seq.

12 As to the meaning of 'joint committee or joint sub-committee of a relevant authority' see PARA 232 note 3. As to joint committees generally see PARA 380.

13 Local Government Act 2000 s 60(4). The validity of any acts of an ethical standards officer is not affected by any contravention of s 60(4), s 60(5) (see the text and notes 14-16) or s 57(6), Sch 4 para 3(2) (see PARA 243) or any breach falling within Sch 4 para 3(3) (see PARA 243): s 60(6).

14 Ie under the Local Government Act 2000 s 59: see PARA 250.

15 Local Government Act 2000 s 60(5)(a). As to the Standards Board for England see PARA 243 et seq.

16 Local Government Act 2000 s 60(5)(b).

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252. Procedure for investigations by ethical standards officers.

The procedure for conducting an investigation¹ is such as the ethical standards officer² considers appropriate in the circumstances of the case³. However, the ethical standards officer must give any person who is the subject of an investigation an opportunity to comment on any allegation that he has failed, or may have failed, to comply with the relevant authority's⁴ code of conduct⁵. An ethical standards officer may, if he thinks fit, pay to persons who attend or furnish information for the purposes of an investigation:

- 388 (1) such sums in respect of the expenses properly incurred by them⁶; and
- 389 (2) such allowances by way of compensation for the loss of their time⁷,

as may be determined by the Secretary of State⁸. The carrying out of an investigation does not affect any action taken by the relevant authority concerned⁹, or any power or duty of the relevant authority concerned to take further action with respect to any matters which are the subject of the investigation¹⁰.

1 Ie an investigation under the Local Government Act 2000 s 59: see PARA 250 et seq.

2 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

3 Local Government Act 2000 s 61(1). The Local Government Act 2000 s 61 also applies, with modifications, to relevant authorities in Wales: see PARA 270.

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 Local Government Act 2000 s 61(2). As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

6 Local Government Act 2000 s 61(3)(a).

7 Local Government Act 2000 s 61(3)(b).

8 Local Government Act 2000 s 61(3). As to the Secretary of State see PARA 96.

9 Local Government Act 2000 s 61(4)(a). Where a person is no longer a member or co-opted member of the relevant authority concerned, but is a member or a co-opted member of another relevant authority in England, any reference in s 61(4) to the relevant authority concerned is treated as including a reference to that other relevant authority: s 61(5). As to the meaning of 'member of a relevant authority' see PARA 232 note 2. As to the meaning of 'co-opted member' see PARA 232 note 3.

10 Local Government Act 2000 s 61(4)(b). See note 9.

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253. Power of ethical standards officers to require information.

An ethical standards officer¹, or a person authorised by such an officer², has a right of access at all reasonable times to every document³ which appears to him necessary for the purpose of conducting an investigation⁴. An ethical standards officer, or a person authorised by such an officer, may:

- 390 (1) make such inquiries of any person as he thinks necessary for the purpose of conducting an investigation⁵;
- 391 (2) require any person to give him such information or explanation as he thinks necessary for the purpose of conducting an investigation⁶; and
- 392 (3) if he thinks necessary, require any person to attend before him in person for the purpose of making inquiries of that person or requiring that person to give any information or explanation⁷.

An ethical standards officer, or a person authorised by such an officer, may require any person: (a) to furnish information concerning communications between the authority concerned and any government department⁸; or (b) to produce any correspondence or other documents forming part of any such communications⁹.

A person who without reasonable excuse fails to comply with these requirements¹⁰ is guilty of an offence¹¹.

A relevant authority must provide¹² an ethical standards officer, or a person authorised by such an officer, with every facility and all information which he may reasonably require for the purposes of conducting an investigation in relation to a member or co-opted member, or former member or co-opted member, of the authority¹³.

To assist him in any investigation, an ethical standards officer may obtain advice from any person who in his opinion is qualified to give it, and may pay to any such person such fees or allowances as he may determine with the approval of the Secretary of State¹⁴. However, no person may be compelled¹⁵ for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court¹⁶.

1 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

2 As to authorisation see PARA 251.

3 For these purposes, any reference to documents includes a reference to information held by means of a computer or in any other electronic form: Local Government Act 2000 s 62(11).

4 Local Government Act 2000 s 62(1) (amended by the Local Government and Public Involvement in Health Act 2007 ss 191(3)(a), (b), 241, Sch 18 Pt 15). The reference in the text is to investigations under the Local Government Act 2000 s 59: see PARA 250.

In relation to cases referred to the Standards Board for England before 1 April 2008 the right of access is limited to every document relating to a relevant authority: see s 62(1); and the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 2(2)(c), (d). As to the Standards Board for England see PARA 243 et seq.

The Local Government Act 2000 s 62 also applies, with modifications, to relevant authorities in Wales: see PARA 271.

5 Local Government Act 2000 s 62(2)(a).

6 Local Government Act 2000 s 62(2)(b).

7 Local Government Act 2000 s 62(2)(c).

8 Local Government Act 2000 s 62(4)(a).

9 Local Government Act 2000 s 62(4)(b). No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, is to apply to the disclosure of information in accordance with s 62(4): s 62(5). Where s 62(4) applies, the Crown is not entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings: s 62(6).

Nothing in s 62 affects: (1) the restriction imposed by the Parliamentary Commissioner Act 1967 s 11(2) (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41) on the disclosure of information by the Parliamentary Commissioner or his officers; (2) the restriction imposed by the Local Government Act 1974 s 32(2) (see PARA 863; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 48) on the disclosure of information obtained in connection with investigations under Part III of that Act (Commission for Local Administration in England); (3) the restriction imposed by the Health Service Commissioners Act 1993 s 15 (see **HEALTH SERVICES** vol 54 (2008) PARA 651) on the disclosure of information by the Health Service Commissioner for England or by his officers; or (4) the restriction imposed by the Public Services Ombudsman (Wales) Act 2005 s 26 (see **ADMINISTRATIVE LAW**: Local Government Act 2000 s 62(7) (amended by the Local Government and Public Involvement in Health Act 2007 s 182, Sch 12 para 17(1), (2); and the Public Services Ombudsman (Wales) Act 2005 ss 35, 39(2), Sch 4 paras 1, 5, Sch 7). As to the Parliamentary Commissioner see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to the Commission for Local Administration see PARA 839 et seq. As to the Health Service Commissioners see **HEALTH SERVICES** vol 54 (2008) PARA 641 et seq.

10 In the requirements under the Local Government Act 2000 s 62(2) (see the text and notes 5-7), s 62(4) (see the text and notes 8-9).

11 Local Government Act 2000 s 62(10). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 62(10). As to the standard scale see PARA 105 note 7.

12 In without prejudice to the Local Government Act 2000 s 62(1), (2): see the text and notes 1-7.

13 Local Government Act 2000 s 62(3).

14 Local Government Act 2000 s 62(8). As to the Secretary of State see PARA 96.

15 In subject to the Local Government Act 2000 s 62(5), (6): see note 9.

16 Local Government Act 2000 s 62(9).

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254. Restrictions on disclosure of information.

Information obtained¹ by ethical standards officers² must not be disclosed unless one or more of the following conditions is satisfied³:

- 393 (1) the disclosure is made for the purposes of enabling the Standards Board for England⁴, an ethical standards officer, the Public Services Ombudsman for Wales⁵ or the president, deputy president or any tribunal of either of the adjudication panels⁶ to perform their functions under Part III of the Local Government Act 2000⁷;
- 394 (2) the person to whom the information relates has consented to its disclosure⁸;
- 395 (3) the information has previously been disclosed to the public with lawful authority⁹;
- 396 (4) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom¹⁰, and the information in question was not obtained under the provisions relating to the power of ethical standards officers to require information¹¹;
- 397 (5) the disclosure is made to the Audit Commission¹² for the purposes of any functions of the Audit Commission or an auditor under the Audit Commission Act 1998¹³;
- 398 (6) the disclosure is made to the Auditor General for Wales for the purposes of any functions of the Auditor General for Wales or an auditor under Part 2 of the Public Audit (Wales) Act 2004¹⁴;
- 399 (7) the disclosure is made for the purposes of enabling the monitoring officer of a relevant authority to perform functions conferred on him by or under Part III of the Local Government Act 2000¹⁵;
- 400 (8) the disclosure is made to the Commission for Local Administration in England for the purposes of any of its functions¹⁶;
- 401 (9) the disclosure is made to the Electoral Commission for the purposes of any of its functions¹⁷;
- 402 (10) the disclosure is made to any person specified in an order made by the Secretary of State¹⁸.

The Secretary of State or a relevant authority¹⁹ in England may give notice in writing to any ethical standards officer with respect to:

- 403 (a) any document or information specified in the notice²⁰; or
- 404 (b) any class of documents or information so specified²¹,

that in his or, as the case may be, its opinion, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest²². Where such notice is given to an ethical standards officer, any document or information specified in the notice, or any document or information of a class so specified, may not be disclosed by the ethical standards officer or any other person²³.

A person who discloses information or a document in contravention of these provisions is guilty of an offence²⁴.

1 le under the Local Government Act 2000 s 61 (see PARA 252) or s 62 (see PARA 253).

2 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

3 Local Government Act 2000 s 63(1). The provisions of s 63(1) apply in respect of information obtained by monitoring officers in the performance of any of their functions under the Local Government Act 2000 Pt III (ss 49-83) and regulations made thereunder as they apply in respect of information obtained by ethical standards officers, but subject to modification permitting disclosure for any of the following purposes: (1) enabling a standards committee or sub-committee of a standards committee to perform any of its functions in connection with the investigation and consideration of an alleged breach of an authority's code of conduct; or (2) enabling a tribunal drawn from members of the Adjudication Panel to consider any appeal from a finding of a standards committee or sub-committee of a standards committee established in connection with an alleged breach of an authority's code of conduct: see Local Government Act 2000 s 63(1)(aa); and the Standards Committee

(England) Regulations 2008, SI 2008/1085, reg 12. The Anti-terrorism, Crime and Security Act 2001 s 17 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 395) applies to the Local Government Act 2000 s 63(1): see the Anti-terrorism, Crime and Security Act 2001 s 17, Sch 4 para 50.

The Local Government Act 2000 s 63 also applies, with modifications, to relevant authorities in Wales: see PARA 272.

4 As to the Standards Board for England see PARA 243 et seq.

5 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

6 As to adjudication panels see PARA 278.

7 Local Government Act 2000 s 63(1)(a) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 6). The provisions referred to in the text are those of the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

8 Local Government Act 2000 s 63(1)(b).

9 Local Government Act 2000 s 63(1)(c).

10 As to the meaning of 'United Kingdom' see PARA 116 note 18.

11 Local Government Act 2000 s 63(1)(d). The provisions referred to in the text are those of s 62(2): see PARA 253.

12 As to the meaning of 'Audit Commission' see PARA 232 note 7. As to the Audit Commission generally see PARA 744 et seq.

13 Local Government Act 2000 s 63(1)(e). As to the Audit Commission Act 1998 see PARA 744 et seq.

14 Local Government Act 2000 s 63(1)(f) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 52, 54). The reference in the text to the Public Audit (Wales) Act 2004 is to the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59): see PARA 796 et seq.

15 Local Government Act 2000 s 63(1)(g) (s 63(1)(g)-(j) added by the Local Government and Public Involvement in Health Act 2007 s 191(4)). These provisions apply to any case referred to the Standards Board on or after 1 April 2008: Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172, art 7(2). The reference in the text to the Local Government Act 2000 is to the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

16 Local Government Act 2000 s 63(1)(h) (as added: see note 15). As to the Commission for Local Administration in England see PARA 839 et seq.

17 Local Government Act 2000 s 63(1)(i) (as added: see note 15). As to the Electoral Commission see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 31 et seq.

18 Local Government Act 2000 s 63(1)(j) (as added: see note 15). As to the Secretary of State see PARA 96. At the date at which this volume states the law no such order had been made under s 63.

19 As to the meaning of 'relevant authority' see PARA 232 note 4.

20 Local Government Act 2000 s 63(2)(a).

21 Local Government Act 2000 s 63(2)(b).

22 Local Government Act 2000 s 63(2).

23 Local Government Act 2000 s 63(3).

24 Local Government Act 2000 s 63(4). A person guilty of an offence is liable: (1) on summary conviction, to imprisonment for a term not exceeding six months; or (2) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both: s 63(4).

under the Local Government Act 2000/C. INVESTIGATION AND DETERMINATION/(A) Investigations and Determinations in England/255. Reports by ethical standards officers.

255. Reports by ethical standards officers.

Where an ethical standards officer¹ determines in relation to any case that it is appropriate to find that there has been no failure to comply with the relevant authority's² code of conduct³ or that there has been such a failure but no action needs to be taken⁴:

- 405 (1) he may produce a report on the outcome of his investigation⁵;
- 406 (2) he may provide a summary of any such report to any newspapers circulating in the area of the relevant authority concerned⁶;
- 407 (3) he must send to the monitoring officer⁷ of the relevant authority concerned a copy of any such report⁸; and
- 408 (4) where he does not produce any such report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation⁹.

Where an ethical standards officer determines in relation to any case that it is appropriate to find that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority¹⁰ he must¹¹:

- 409 (a) produce a report on the outcome of his investigation¹²;
- 410 (b) refer the matters¹³ which are the subject of the investigation to the monitoring officer of the relevant authority concerned¹⁴; and
- 411 (c) send a copy of the report to the monitoring officer and the standards committee¹⁵ of the relevant authority concerned¹⁶.

Where an ethical standards officer determines in relation to any case that it is appropriate to find that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England¹⁷ for adjudication by a tribunal¹⁸ he must¹⁹:

- 412 (i) produce a report on the outcome of his investigation²⁰;
- 413 (ii) refer the matters which are the subject of the investigation to the president of the Adjudication Panel for England for adjudication by a tribunal²¹; and
- 414 (iii) send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for England²².

A report may cover more than one investigation²³ in relation to any members²⁴ or co-opted members²⁵, or former members or co-opted members, of the same relevant authority²⁶.

An ethical standards officer must inform any person who is the subject of an investigation²⁷, and must take reasonable steps to inform any person who made any allegation which gave rise to the investigation²⁸ of the outcome of the investigation²⁹.

1 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

2 As to the meaning of 'relevant authority' see PARA 232 note 4.

3 Ie where the ethical standards officer makes a finding under the Local Government Act 2000 s 59(4)(a): see PARA 250. As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

- 4 Local Government Act 2000 s 64(1). The finding referred to in the text is a finding under s 59(4)(b): see PARA 250.
 - 5 Local Government Act 2000 s 64(1)(a). As to investigations by ethical standards officers see PARA 251 et seq. As to interim reports of ethical standards officers see PARA 256.
 - 6 Local Government Act 2000 s 64(1)(b). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, the references in s 64(1)(b), s 64(1)(c) (see the text and notes 7-8) and s 64(1)(d) (see the text to note 9), s 64(2) (c) (see the text and notes 15-16) and s 64(3)(c) (see the text to note 22) and s 64(3A) (see notes 8, 22) to the relevant authority concerned are treated as including references to that other relevant authority: s 64(4)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 192(2), (4)).
 - 7 As to monitoring officers see PARA 429.
 - 8 Local Government Act 2000 s 64(1)(c). The ethical standards officer may also send a copy of that report to the standards committee of the relevant authority concerned if he believes that it will assist that committee in the discharge of their functions under the Local Government Act 2000 Pt III (ss 49-83): s 64(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 192(2), (3)).
 - 9 Local Government Act 2000 s 64(1)(d).
 - 10 Ie where the ethical standards officer makes a finding under the Local Government Act 2000 s 59(4)(c): see PARA 250.
 - 11 See the Local Government Act 2000 s 64(2). The Standards Board for England may issue guidance on references made under s 64(2): see PARA 243.
 - 12 Local Government Act 2000 s 64(2)(a).
 - 13 Ie subject to the Local Government Act 2000 s 64(4)(b): see note 14.
 - 14 Local Government Act 2000 s 64(2)(b). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, an ethical standards officer who reaches a finding under s 59(4)(c) (see the text to note 10; and see PARA 250) must refer the matters concerned either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority: s 64(4)(b).
- Where a matter is referred to a monitoring officer under s 64(2), (4) he must send a copy of any report from the ethical standards officer to any member who is the subject of the report and once it has been received refer the report to the standards committee for consideration under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17 (see PARA 238): see reg 15.
- An ethical standards officer who refers any matters to the monitoring officer of a relevant authority under s 64(2) or (4) may give directions to the monitoring officer as to the way in which those matters are to be dealt with: s 66(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (7)).
- 15 As to standards committees see PARA 238.
 - 16 Local Government Act 2000 s 64(2)(c).
 - 17 As to adjudication panels see PARA 278.
 - 18 Ie where the ethical standards officer makes a finding under the Local Government Act 2000 s 59(4)(d): see PARA 250. The tribunal referred to in the text is a tribunal falling within s 76(1): see PARA 279.
 - 19 See the Local Government Act 2000 s 64(3).
 - 20 Local Government Act 2000 s 64(3)(a).
 - 21 Local Government Act 2000 s 64(3)(b). The Secretary of State may by regulations make provision for or in connection with the withdrawal of a reference under s 64(3)(b) (or s 65(4): see PARA 256): s 64(7). An ethical standards officer who has referred a matter to the president of the Adjudication Panel may withdraw that reference where: (1) a sentence of imprisonment (whether suspended or not) for a period of not less than three months, without the option of a fine, has been passed on the respondent; (2) the ethical standards officer is satisfied that the matter is materially less serious than appeared to be the case when it was referred to the president of the Adjudication Panel and that as a consequence is not sufficiently serious to be determined by a case tribunal or a standards committee, or that the pursuit of the matter would not be in the public interest; and

(3) the president or deputy president of the Adjudication Panel invites the ethical standards officer to withdraw the reference: see the Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 5(1)(a), (2).

The following requirements must also be satisfied: (a) except in a case where the president or deputy president of the Adjudication Panel agrees to dispense with the requirement in this paragraph, the ethical standards officer has given 28 days' notice in writing to: (i) the person who made the written allegation under the Local Government Act 2000 s 57A (see PARA 247) which gave rise to the investigation; (ii) the respondent; (iii) the standards committee of any relevant authority concerned; and (iv) the monitoring officer of any relevant authority concerned, that a request is to be made to the president of the Adjudication Panel to withdraw the reference; and has considered any representations received from any person in that regard; and (b) the president of the Adjudication Panel, or in the absence of the president, the deputy president of the Adjudication Panel, has given consent to the withdrawal of the reference: see the Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 5(1)(b), (3), (4).

The president of the Adjudication Panel, or the deputy president, as the case may be, must give reasons in writing for the giving of an invitation under head (3) or of consent under head (b): reg 5(4). Where a reference to the president of the Adjudication Panel is withdrawn, the ethical standards officer must give to each person or body to whom notice was given under head (a) written notice of the withdrawal, and a copy of the reasons for that withdrawal: Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 5(5).

22 Local Government Act 2000 s 64(3)(c). The ethical standards officer may also send a copy of that report to the standards committee of the relevant authority concerned if he believes that it will assist that committee in the discharge of its functions under Part III of the Local Government Act 2000 Pt III (ss 49-83): s 64(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 192(2), (3)).

23 In an investigation under the Local Government Act 2000 s 59: see PARA 250.

24 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

25 As to the meaning of 'co-opted member' see PARA 232 note 3.

26 Local Government Act 2000 s 64(5).

27 Local Government Act 2000 s 64(6)(a).

28 Local Government Act 2000 s 64(6)(b).

29 Local Government Act 2000 s 64(6).

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256. Interim reports.

Where an ethical standards officer¹ considers it necessary in the public interest he may before the completion of an investigation² produce an interim report³. An interim report may cover more than one investigation in relation to any members⁴ or co-opted members⁵, or former members or co-opted members, of the same relevant authority⁶. Where the prima facie evidence is such that it appears to the ethical standards officer producing the interim report that:

- 415 (1) the person who is the subject of the report has failed to comply with the code of conduct⁷ of the relevant authority concerned⁸;
- 416 (2) the nature of that failure is such as to be likely to lead to disqualification⁹;
and
- 417 (3) it is in the public interest to suspend¹⁰ or partially suspend¹¹ that person immediately¹²,

the interim report may include a recommendation that that person should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned¹³ for a period which does not exceed six months or, if shorter, the remainder of the person's term of office¹⁴. Where an ethical standards officer produces an interim report which contains such a recommendation, he must refer the matters which are the subject of the report to the president of the Adjudication Panel for England¹⁵ for adjudication by a tribunal¹⁶.

A copy of any report under these provisions must be given: (a) to any person who is the subject of the report¹⁷; (b) to the monitoring officer¹⁸ of the relevant authority concerned¹⁹; and (c) to the president of the Adjudication Panel for England²⁰. The report may also be given to the standards committee of the relevant authority concerned if the ethical standards officer believes that it will assist that committee in the discharge of its functions under Part III of the Local Government Act 2000²¹.

1 As to the meaning of 'ethical standards officer' see PARA 243 note 11. As to the functions of ethical standards officers see PARA 250.

2 le under the Local Government Act 2000 s 59: see PARA 250 et seq.

3 Local Government Act 2000 s 65(1). As to reports of ethical standards officers see PARA 255.

4 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

5 As to the meaning of 'co-opted member' see PARA 232 note 3.

6 Local Government Act 2000 s 65(2). As to the meaning of 'relevant authority' see PARA 232 note 4.

7 As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

8 Local Government Act 2000 s 65(3)(a).

9 Local Government Act 2000 s 65(3)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 192(6), (7)). The disqualification referred to in the text is disqualification under the Local Government Act 2000 s 78A: see PARA 282.

10 A person who is suspended under the Local Government Act 2000 Pt III (ss 49-83) from being a member of a relevant authority is also suspended from being a member of any committee, sub-committee, joint committee or joint sub-committee of the authority: s 83(9). However, this does not apply to a person who is partially suspended: s 83(9). A person who is suspended under Pt III from being a member of a relevant authority to which Pt II (ss 10-48) applies is also suspended, if he is a member of an executive of the authority, from being such a member: s 83(10). However, these provisions do not apply to a person who is partially suspended under Pt III (see note 11): s 83(9), (10). As to the meaning of 'committee of a relevant authority' see PARA 232 note 3. As to committees and sub-committees generally see PARA 371 et seq. As to the meaning of 'joint committee or joint sub-committee of a relevant authority' see PARA 232 note 3. As to joint committees generally see PARA 380. As to executive arrangements see PARA 303 et seq.

11 Any reference in the Local Government Act 2000 Pt III (ss 49-83) to a person being partially suspended from being a member or co-opted member of a relevant authority includes a reference to a person being prevented from exercising particular functions or having particular responsibilities as such a member or co-opted member: ss 65(7), 83(7). For these purposes, the reference to particular functions or particular responsibilities as a member of a relevant authority in the case of a relevant authority to which Pt II applies, includes a reference to particular functions or particular responsibilities as a member of an executive of the authority: see ss 65(7), 83(8).

12 Local Government Act 2000 s 65(3)(c).

13 However, where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England this reference to the relevant authority concerned is treated as a reference to that other relevant authority: see the Local Government Act 2000 s 65(6)(a).

14 Local Government Act 2000 s 65(3).

15 As to adjudication panels see PARA 278.

16 Local Government Act 2000 s 65(4). The tribunal referred to in the text is a tribunal falling within s 76(2): see PARA 279. The Secretary of State may by regulations make provision for or in connection with the withdrawal of a reference under s 65(4): s 64(4A) (added by the Local Government and Public Involvement in Health Act 2007 s 192(6), (8)). Provision has been made for the withdrawal of such a reference: see the Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 5; and PARA 255 note 21.

17 Local Government Act 2000 s 65(5)(a).

18 As to monitoring officers see PARA 429.

19 Local Government Act 2000 s 65(5)(b). However, where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England the reference to the relevant authority concerned is treated as including a reference to that other relevant authority: s 65(6)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 192(6), (10)).

20 Local Government Act 2000 s 65(5)(c).

21 Local Government Act 2000 s 65(5A) (added by the Local Government and Public Involvement in Health Act 2007 s 192(6), (9)). See also note 19.

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257. Disclosure by monitoring officers of ethical standards officers' reports.

Where the monitoring officer¹ of a relevant authority² receives a copy of an ethical standards officer's report on the outcome of an investigation³ or is informed of the outcome of an investigation⁴ he may inform any relevant person⁵ of that outcome⁶. Where the monitoring officer believes that it will assist in promoting high standards of conduct by members and co-opted members⁷, he may send a copy of any report⁸, including an interim report⁹, to relevant persons¹⁰.

1 As to monitoring officers see PARA 429.

2 As to the meaning of 'relevant authority' see PARA 232 note 4.

3 I.e. by virtue of the Local Government Act 2000 s 64(1)(c): see PARA 255.

4 I.e. by virtue of the Local Government Act 2000 s 64(1)(d): see PARA 255.

5 'Relevant person' means: (1) any member or co-opted member of the relevant authority; (2) any officer of that authority; or (3) where that authority has an executive, any member of the executive: Local Government Act 2000 s 65A(4) (as added see note 6). As to the meaning of 'member of a relevant authority' see PARA 232 note 2. As to the meaning of 'co-opted member' see PARA 232 note 3.

6 Local Government Act 2000 s 65A(1) (added by the Local Government and Public Involvement in Health Act 2007 s 193).

7 Local Government Act 2000 s 65A(3) (as added: see note 6).

8 I.e. a report received under the Local Government Act 2000 s 64(1)(c): see PARA 153.

9 I.e. a report received under the Local Government Act 2000 s 65(5): see PARA 154.

10 Local Government Act 2000 s 65A(2) (as added: see note 6).

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258. Power to make provision for matters referred to monitoring officers.

The Secretary of State¹ may by regulations make provision in relation to the way in which any matters referred² to the monitoring officer³ of a relevant authority⁴ are to be dealt with⁵. The regulations may include provision for or in connection with⁶:

- 418 (1) enabling a monitoring officer of a relevant authority to conduct an investigation in respect of any matters referred to him⁷;
- 419 (2) enabling a monitoring officer of a relevant authority to make a report or recommendations to the standards committee⁸ of the authority in respect of any matters referred to him⁹;
- 420 (3) enabling a standards committee of a relevant authority to consider any report or recommendations made to it by a monitoring officer of the authority, including provision with respect to the procedure to be followed by the standards committee¹⁰;
- 421 (4) enabling a standards committee of a relevant authority, following its consideration of any such report or recommendations, to take any action prescribed by the regulations, including action against any member¹¹ or co-opted member¹², or former member or co-opted member, of the authority who is the subject of any such report or recommendation¹³;
- 422 (5) the publicity given to any such reports, recommendations or action¹⁴;
- 423 (6) enabling a monitoring officer of a relevant authority, in such circumstances as may be prescribed by the regulations, to refer back any matters that were referred to him in a written allegation¹⁵.

The provision which may be made by virtue of head (1) above includes provision for or in connection with¹⁶: (a) conferring powers on a monitoring officer of a relevant authority to enable him to conduct an investigation in respect of any matters referred to him¹⁷; (b) conferring rights, including the right to make representations, on any member or co-opted member, or former member or co-opted member, of a relevant authority who is the subject of any such investigation¹⁸.

The provision which may be made by virtue of head (4) above includes provision for or in connection with¹⁹: (i) enabling a standards committee of a relevant authority to censure a member or co-opted member, or former member or co-opted member, of the authority²⁰; (ii) enabling a standards committee of a relevant authority to suspend²¹ or partially suspend²² a person from being a member or co-opted member of the authority for a limited period²³; (iii) conferring a right of appeal on a member or co-opted member, or former member or co-opted member, of a relevant authority in respect of any action taken against him²⁴.

A person who refers any matters to the monitoring officer²⁵ may give directions as to the way in which those matters are to be dealt with²⁶.

1 As to the Secretary of State see PARA 96.

2 lie under the Local Government Act 2000 s 57A (see PARA 247), 60(2) or (3) (see PARA 251) or s 64(2) or (4) (see PARA 255).

3 As to monitoring officers see PARA 429.

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 Local Government Act 2000 s 66(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (2)). As to the regulations which have been made under s 66(1) see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483; and the Standards Committee (England) Regulations 2008, SI 2008/1085.

6 See the Local Government Act 2000 s 66(2). Nothing in s 66(2) affects the generality of the power under s 66(1) (see the text and notes 1-5): s 66(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (6)).

7 Local Government Act 2000 s 66(2)(a). The provision which may be made by virtue of s 66(2)(a) may include provision corresponding to or applying, with or without modifications, any provisions of s 62 (see PARA 271), 63 (see PARA 272) or 67(1), (1A), (3)-(5) (see PARA 266): see s 66(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 194(1), (4)).

8 As to standards committees see PARA 238.

9 Local Government Act 2000 s 66(2)(b). The provision which may be made by virtue of s 66(2)(b) includes provision for or in connection with interim reports and the disclosure of reports: s 66(3B) (added by the Local Government and Public Involvement in Health Act 2007 s 194(1), (4)). As to interim reports see PARA 256; and as to reports generally see PARA 255.

10 Local Government Act 2000 s 66(2)(c).

11 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

12 As to the meaning of 'co-opted member' see PARA 232 note 3.

13 Local Government Act 2000 s 66(2)(d). The provision which may be made by virtue of s 66(2)(d) includes provision for or in connection with: (1) enabling a standards committee, where it considers that the action it could take against a person is insufficient, to refer the case to the president of the Adjudication Panel for England for a decision by members of that Panel on the action that should be taken against the person; (2) the appointment of members of that Panel to deal with such a reference; (3) enabling those members to decide what action, of a kind authorised by the regulations, should be taken against the person and enabling them to take that action; (4) the composition, practice and procedure of the panel (including provision corresponding to or applying, with or without modifications, any provision of s 76(6)-(12), (15) (see PARA 279)); (5) conferring a right of appeal on a person in respect of action taken against him by the panel: s 66A(1) (s 66A added by the Local Government and Public Involvement in Health Act 2007 s 195). The kinds of action that may be authorised under head (3) include any kinds of action that may be authorised in relation to a tribunal by regulations under s 78A(4)-(6): s 66A(2) (as so added). Nothing in s 66A affects the generality of the power under s 66(1) (see the text and notes 1-5): s 66(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (6)).

14 Local Government Act 2000 s 66(2)(e).

15 Local Government Act 2000 s 66(2)(f) (added by the Local Government and Public Involvement in Health Act 2007 s 194(1), (3)). The provision which may be made by virtue of the Local Government Act 2000 s 66(2) (f) includes provision applying any of the provisions of s 57A, or 57C (see PARA 247), with or without modifications, where matters have been referred back to the monitoring officer: s 66(4A) (added by the Local Government and Public Involvement in Health Act 2007 s 194(1), (5)). Matters referred to a monitoring officer in a written allegation are those referred under the Local Government Act 2000 s 57A: see PARA 247.

16 Local Government Act 2000 s 66(3). Nothing in s 66(3) affects the generality of the power under s 66(1) (see the text and notes 1-5): s 66(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1)-(6)).

17 Local Government Act 2000 s 66(3)(a). Provision made by virtue of s 66(3) may include provision corresponding to or applying, with or without modifications, any provisions of s 62 (see PARA 271), 63 (see PARA 272) or 67(1), (1A), (3) to (5) (see PARA 266): s 66(3A).

18 Local Government Act 2000 s 66(3)(b). See also note 17.

19 Local Government Act 2000 s 66(4). Nothing in s 66(4) affects the generality of the power under s 66(1) (see the text and notes 1-5): s 66(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1)-(6)).

20 Local Government Act 2000 s 66(4)(a).

21 As to the meaning of 'suspend' see PARA 256 note 10.

22 As to the meaning of 'partially suspend' see PARA 256 note 11.

23 Local Government Act 2000 s 66(4)(b).

24 Local Government Act 2000 s 66(4)(c).

25 le under the Local Government Act 2000 s 57A (see PARA 247), 60(2), (3) (see PARA 269) or 64(2), (4) (see PARA 255).

26 Local Government Act 2000 s 66(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (7)).

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259. Referral to a monitoring officer.

Where a standards committee¹ or an ethical standards officer² refers a matter to a monitoring officer following a written allegation³, with a direction to take steps other than carrying out an investigation⁴ the monitoring officer must:

- 424 (1) deal with the matter in accordance with the direction⁵; and
- 425 (2) give notice that the matter has been so referred to (a) the member⁶ who is the subject of the allegation⁷; (b) any person who made the allegation which gave rise to the referral⁸; (c) the standards committee of any other authority concerned⁹; and (d) any parish council concerned¹⁰; and
- 426 (3) within the period of three months beginning on the day on which the direction was received, or as soon as is reasonably practicable thereafter, submit a written report giving details of the action taken or proposed, to comply with the direction¹¹.

If the standards committee is not satisfied with the action specified in the report¹², it must give a further direction to the monitoring officer¹³. If the standards committee is satisfied with the action specified in the report, it must give written notice to that effect to the people mentioned in head (2) above¹⁴.

If the ethical standards officer concerned is not satisfied with the action specified in the report¹⁵, that officer may require the monitoring officer to arrange for a statement to be published in at least one newspaper circulating in the area of any authority concerned¹⁶, giving details of the direction given by the ethical standards officer¹⁷, the ethical standards officer's reasons for being dissatisfied¹⁸, and the monitoring officer's response to the ethical standards officer's reasons for being dissatisfied¹⁹. If the ethical standards officer concerned is satisfied with the action specified in the report that officer must give written notice to that effect to the people mentioned in head (2) above²⁰.

Where a standards committee or an ethical standards officer refers a matter to a monitoring officer following a written allegation²¹ for investigation²² the monitoring officer must, unless otherwise directed by the ethical standards officer or standards committee²³:

- 427 (i) inform the people mentioned in head (2) above that the matter has been referred for investigation²⁴.
- 428 (ii) conduct an investigation into the matters referred²⁵; and
- 429 (iii) give any member who is the subject of the investigation the opportunity to comment on the allegation made²⁶.

The monitoring officer must, in conducting an investigation, have regard to any relevant guidance issued, and must comply with any relevant direction given, by the Standards Board for England²⁷.

The monitoring officer may, in conducting an investigation:

- 430 (A) make such inquiries of any person as the monitoring officer thinks necessary or expedient for the purpose of conducting that investigation²⁸;
- 431 (B) require any person to give such information or explanation as the monitoring officer thinks necessary or expedient for the purpose of conducting that investigation²⁹;
- 432 (C) require any of the authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation³⁰;
- 433 (D) require any of the authorities concerned, other than a parish council, to meet the reasonable cost of any advice and assistance provided³¹;
- 434 (E) if any of the authorities concerned is a parish council, require the responsible authority to meet any reasonable costs incurred by that parish council³²; and
- 435 (F) require any of the authorities concerned to afford reasonable access to such documents in the possession of that authority as appear to the monitoring officer to be necessary for the purpose of conducting the investigation³³.

On completion of an investigation under this regulation, the monitoring officer must make a finding³⁴ either that there has been a failure to comply with the code of conduct³⁵ of the authority concerned or, as the case may be, of any other authority concerned³⁶, or that there has not been a failure to comply with the code of conduct of the authority concerned or, as the case may be, of any other authority concerned³⁷. The monitoring officer must also prepare a written report of the investigation which contains a statement as to the finding³⁸, send a copy of that report to the member who was the subject of the investigation³⁹, and refer the report to the standards committee of the authority⁴⁰ and the standards committee of any other authority, other than a parish council, of which the person who was the subject of the investigation is a member, if that other authority so requests⁴¹.

Where a matter is referred to a monitoring officer after an investigation⁴² he must send a copy of any report received from the ethical standards officer who has referred the matter, to any member who is the subject of such a report; and, after that member has received the report⁴³, refer the report to the standards committee of the authority for consideration⁴⁴.

1 As to standards committees see PARA 238.

2 For these purposes 'ethical standards officer' means an ethical standards officer for the purposes of the Local Government Act 2000 s 57(5)(a) (see PARA 243): Standards Committee (England) Regulations 2008, SI 2008/1085, reg 2.

3 ie under the Local Government Act 2000 s 57A(2)(a) or 57A(3) (see PARA 247) in the case of a standards committee; and under s 60(2), (3) (see PARA 251) in the case of a monitoring officer. A standards committee

may only make such a referral after consultation with a monitoring officer: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(2). For these purposes 'monitoring officer' means in relation to an authority which is a relevant authority for the purposes of the Local Government and Housing Act 1989 s 5 (see PARA 429) (designation and reports of monitoring officer) the monitoring officer designated under s 5(1) and includes any person for the time being nominated by the monitoring officer as deputy for the purposes of that section and any person nominated under the Local Government Act 2000 s 82A(2) or (3) (see PARA 243) to perform any function: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 2.

4 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(1). The steps referred to in the text are: (1) arranging for the member who is the subject of an allegation to attend a training course; (2) arranging for that member and the complainant to engage in a process of conciliation; (3) such other steps (not including an investigation), as appear appropriate to the standards committee, or as the case may be, the ethical standards officer: reg 13(3).

5 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(a).

6 For these purposes 'member', in relation to parish councils, includes persons appointed under the Local Government Act 1972 s 16A (see PARA 164): Standards Committee (England) Regulations 2008, SI 2008/1085, reg 2.

7 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(b)(i).

8 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(b)(ii).

9 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(b)(iii).

10 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(b)(iv).

11 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(c). Where the matter was referred to the monitoring officer under the Local Government Act 2000 s 57A (see PARA 247), the report must be submitted to the standards committee (Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(c)(i)); or where the matter was referred to the monitoring officer under the Local Government Act 2000 s 60(2), (3) (see PARA 251), to the ethical standards officer concerned (Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(c)(ii)).

12 Ie the report received under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(c): see the text and note 11.

13 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(5).

14 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(6).

15 Ie the report received under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(4)(c): see the text and note 11.

16 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(8).

17 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(8)(a).

18 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(8)(b).

19 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(8)(c).

20 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(7).

21 Ie where a matter is referred to a monitoring officer under the Local Government Act 2000 s 57A(2)(a), 57A(3) (see PARA 247), 60(2) or (3) (see PARA 251) otherwise than in accordance with the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 13(1) (see the text and notes 1-4).

22 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(1).

23 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(2).

24 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(2)(a).

25 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(2)(b). In the case of an investigation pursuant to a reference under the Local Government Act 2000 s 60(2) or (3) (see PARA 251) the monitoring officer of an authority may, at any stage prior to the completion of the investigation, by a request in

writing to the ethical standards officer concerned, ask that the matter be referred back to that ethical standards officer for investigation; and any such request must set out the reasons for making it: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(5). The ethical standards officer must respond to such a request within 21 days of its receipt and may: (1) direct that the matter be so referred for investigation, in which case the investigation by the monitoring officer concerned ceases; or (2) direct the monitoring officer concerned to continue the investigation: reg 14(6). Where a direction is given under head (2), the monitoring officer may not make a further request in respect of the same matter: reg 14(7).

26 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(2)(c).

27 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(3). As to the Standards Board for England see PARA 243 et seq.

28 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(a).

29 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(b).

30 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(c).

31 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(d).

32 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(e).

33 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(4)(f).

34 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(a).

35 As to codes of conduct see PARA 234-235.

36 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(a)(i).

37 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(a)(ii).

38 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(b).

39 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(c).

40 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(d)(i).

41 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 14(8)(d)(ii).

42 Ie under the Local Government Act 2000 s 64(2) or (4): see PARA 255.

43 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 15(a).

44 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 15(b).

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260. References back from a monitoring officer.

Where a matter is referred to a monitoring officer¹ by a standards committee² for investigation³, the monitoring officer may refer that matter back to the standards committee concerned if⁴:

- 436 (1) as a result of new evidence or information, the monitoring officer is of the opinion that the matter is materially more or less serious than may have seemed apparent to the standards committee when it made its decision⁵, and that the

standards committee would have made a different decision had it been aware of that new evidence or information⁶; or
437 (2) the person who is the subject of the allegation has died, is seriously ill, or has resigned from the authority concerned, and the monitoring officer is of the opinion that in the circumstances it is no longer appropriate to continue with an investigation⁷.

If a matter is referred back to a standards committee, it must make a decision⁸ as if the matter had been made to it as a written allegation⁹. Where a standards committee considers a matter referred back to it under this regulation, it may direct that the matter should not be referred back a further time¹⁰.

1 As to monitoring officers see PARA 429.

2 As to standards committees see PARA 238.

3 le under the Local Government Act 2000 s 57A(2)(a): see PARA 247.

4 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(1).

5 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(1)(a)(i), (ii). In forming an opinion for the purposes of reg 16(1)(a), a monitoring officer may take account of: (1) the failure of any person to co-operate with an investigation; or (2) an allegation that the member concerned has engaged in a further breach of the code of conduct of a relevant authority; or (3) an allegation that another member has engaged in a related breach of the code of conduct of a relevant authority: reg 16(3).

6 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(1)(a)(iii).

7 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(1)(b).

8 le under the Local Government Act 2000 s 57A(2): see PARA 247.

9 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(2). Written allegations are made under the Local Government Act 2000 s 57A(1): see PARA 247.

10 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 16(4).

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261. Consideration of reports by standards committee.

Where a monitoring officer¹ refers a report to the standards committee² of any relevant authority in England³, that standards committee must convene to consider that report and make one of the following findings⁴:

- 438 (1) that it accepts the monitoring officer's finding of no failure to comply with the code of conduct⁵; or
- 439 (2) that the matter should be considered at a hearing of the standards committee⁶; or
- 440 (3) that the matter should be referred to the Adjudication Panel for England⁷ for determination⁸.

As soon as reasonably practicable after making a finding of acceptance⁹, the standards committee must give written notice of that finding to¹⁰:

- 441 (a) the member who is the subject of the finding of no failure¹¹;
- 442 (b) any ethical standards officer concerned¹²;
- 443 (c) the standards committee of any other authority concerned¹³;
- 444 (d) any parish council concerned¹⁴; and
- 445 (e) the person who made the allegation that gave rise to the investigation¹⁵.

He must also arrange for a notice to be published stating that the standards committee has found that there has been no failure on the part of the member concerned to comply with the code of conduct of the authority concerned or, as the case may be, with the code of conduct of any other authority concerned¹⁶.

1 As to monitoring officers see PARA 429.

2 As to standards committees see PARA 238.

3 As to the meaning of 'relevant authority' see PARA 232 note 4. Reports are referred to the standards committee under the Standards Committee (England) Regulations 2008, SI 2008/1085, regs 14, 15: see PARA 259.

4 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1).

5 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1)(a). As to codes of conduct see PARAS 234-235.

6 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1)(b). Hearings of the standards committee are conducted under reg 18: see PARA 262.

7 I.e. the Adjudication Panel for England constituted under the Local Government Act 2000 s 75 (see PARA 278): Standards Committee (England) Regulations 2008, SI 2008/1085, reg 2.

8 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1)(c). A standards committee may only make such a finding if it has determined that the action it could take against the member would be insufficient were a finding of failure to be made, and the president or deputy president of the Adjudication Panel has agreed to accept the referral: reg 17(2). As to the president and deputy president of the Adjudication Panel see PARA 278.

A tribunal may be appointed from the members of the Adjudication Panel to deal with a reference under reg 17(1)(c), as if the reference had been made under the Local Government Act 2000 s 64(3)(b) (see PARA 255) and has the same powers to take action as in such a case: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(6). Where a tribunal so appointed decides that a member has failed to comply with the code of conduct of an authority, the member may appeal to the High Court against that decision, or any other decision made by that tribunal: reg 17(7).

9 I.e. a finding under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1)(a): see the text and notes 4-5.

10 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a).

11 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a)(i).

12 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a)(ii).

13 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a)(iii).

14 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a)(iv).

15 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(a)(v).

16 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(3)(b). The notice referred to in the text must be published: (1) in at least one newspaper circulating in the area of any authority concerned; and (2) if considered appropriate by the standards committee, on the web page of any authority concerned; and

(3) if considered appropriate by the standards committee, in any other publication: reg 17(5). However, such notice must not be published if the member concerned so requests: reg 17(4).

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262. Hearings by standards committee.

Where a standards committee¹ holds a hearing², it must ensure that it is conducted having regard to any relevant guidance issued by the Standards Board for England³, and that it is held within the specified period⁴, with the proviso that the hearing must not be held until at least 14 days after the date on which the monitoring officer sent the report to the member⁵ who is the subject of the allegation, unless the member concerned agrees to the hearing being held earlier⁶. If the hearing is not held within the specified period⁷ it must be held as soon as reasonably practicable thereafter⁸. Any member who is the subject of a report being considered by the standards committee must be given the opportunity to present evidence and make representations at the hearing either orally or, if the member chooses, in writing⁹; and either personally, or by counsel or by a solicitor or, with the committee's consent, by any other representative¹⁰.

A standards committee may conduct a hearing using such procedures as it considers appropriate in the circumstances¹¹, and may arrange for the attendance at a hearing of such witnesses as it considers appropriate¹².

A member who is the subject of a hearing may arrange for the attendance at that hearing of such witnesses as he wishes¹³, although a standards committee may place a limit on the number of witnesses a member may call if it considers that the number that the member proposes is unreasonable¹⁴. A member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the consent of the standards committee, by any other representative¹⁵.

If a member who is the subject of a report to the standards committee fails to attend a hearing of which that member has been given notice, the standards committee may unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that member¹⁶, or adjourn the hearing to another date¹⁷.

A standards committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and require the monitoring officer to seek further information or undertake further investigation on any point specified by it¹⁸.

Where a report under consideration has been referred to a monitoring officer by an ethical standards officer¹⁹, the standards committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request to the ethical standards officer concerned that the matter be referred back to the ethical standards officer for further investigation²⁰. Where such a matter is referred to an ethical standards officer he must respond to the request within 21 days of its receipt and may²¹:

446 (1) agree to accept the referral for further investigation and direct that the standards committee cease its consideration of the matter²²; or

447 (2) direct the standards committee to continue to deal with the matter²³, in which case the standards committee must do so and must not make any further request for further investigation²⁴ in respect of the matter²⁵.

- 1 As to standards committees see PARA 328.
- 2 Ie a hearing pursuant to a finding under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 17(1)(b): see PARA 261.
- 3 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(a). As to the Standards Board for England see PARA 243 et seq.
- 4 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(b). The specified period is three months beginning: (1) in the case of a report referred by an ethical standards officer, on the date on which the monitoring officer received the report; or (2) in the case of a report prepared by the monitoring officer, on the date on which the report is completed: see reg 18(1)(b). As to the meaning of 'ethical standards officer' see PARA 259 note 2; and as to the meaning of 'monitoring officer' see PARA 259 note 3.
- 5 As to the meaning of 'member' see PARA 259 note 6.
- 6 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(c).
- 7 Ie the period specified in the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(b): see note 4.
- 8 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(d).
- 9 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(e)(i).
- 10 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(1)(e)(ii).
- 11 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(2). Such procedures are subject to reg 18(1)(a), (e): see the text to and notes 1-3, 9, 10.
- 12 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(3).
- 13 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(4).
- 14 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(5).
- 15 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(6).
- 16 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(7)(a).
- 17 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(7)(b).
- 18 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(8). The standards committee must not adjourn the hearing on more than one occasion under reg 18(8).
- 19 Ie under the Local Government Act 2000 s 64(2) or (4) (see PARA 255): see the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(9).
- 20 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(10). Any such request must set out the committee's reasons for making it: see reg 18(10).
- 21 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(11).
- 22 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(11)(a).
- 23 Ie in accordance with the Standards Committee (England) Regulations 2008, SI 2008/1085.
- 24 Ie under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(10): see the text and note 20.
- 25 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18(11)(b). Where the ethical standards officer gives such a direction the standards committee must convene to continue its consideration of the matter within three months of the receipt of the ethical standards officer's direction or as soon as practicable thereafter: reg 18(12). The provisions of reg 18(1)(a) (see the text and notes 1-3), (c) (see the text and notes 5-6), (2)-(8) (see the text and notes 11-18) apply to such a hearing: see reg 18(13).

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263. Findings of standards committees and appeals.

Following a hearing¹ a standards committee² must make one of the following findings:

- 448 (1) that the member³ who was the subject of the hearing had not failed to comply with the code of conduct⁴ of any authority concerned⁵;
- 449 (2) that the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned but that no action needs to be taken in respect of the matters which were considered at the hearing⁶; or
- 450 (3) that the member who was the subject of the hearing had failed to comply with the code of conduct of an authority concerned and that a sanction should be imposed⁷.

If a standards committee makes a finding under head (3) above it must impose any one of, or any combination of, the following sanctions⁸:

- 451 (a) censure of that member⁹;
- 452 (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and do not unduly restrict the person's ability to perform the functions of a member¹⁰;
- 453 (c) partial suspension¹¹ of that member for a period not exceeding six months¹²;
- 454 (d) suspension¹³ of that member for a period not exceeding six months¹⁴;
- 455 (e) that the member submits a written apology in a form specified by the standards committee¹⁵;
- 456 (f) that the member undertakes such training as the standards committee specifies¹⁶;
- 457 (g) that the member participate in such conciliation as the standards committee specifies¹⁷;
- 458 (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee¹⁸;
- 459 (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies¹⁹;
- 460 (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee²⁰;
- 461 (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the standards committee specifies²¹.

Any sanction imposed under this regulation must generally commence²² immediately following its imposition by the standards committee²³. However, a standards committee may direct that the sanction imposed under heads (b) to (k) above or, where a combination of such sanctions is

imposed, such one or more of them as the committee specifies, commence on such date, within a period of six months after the imposition of that sanction, as the committee specifies²⁴.

A standards committee must, as soon as reasonably practicable after making a finding²⁵ give written notice of the finding and the reasons for it to²⁶:

- 462 (i) the member who is the subject of the finding²⁷;
- 463 (ii) the Standards Board²⁸;
- 464 (iii) the standards committee of any other authority concerned²⁹;
- 465 (iv) any parish councils concerned³⁰; and
- 466 (v) any person who made an allegation that gave rise to the investigation³¹.

A standards committee must also arrange for a summary of such notice to be published as specified³², with particular requirements depending on the finding that was made³³.

Where a standards committee makes a finding under head (2) or (3) above, the member who is the subject of that finding may, by way of notice in writing given to the president of the Adjudication Panel³⁴, seek permission to appeal³⁵, and, if appropriate, apply for the suspension of any sanction imposed until such time as any appeal is determined³⁶.

1 le a hearing under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 18: see PARA 262.

2 As to standards committees see PARA 238.

3 As to the meaning of 'member' see PARA 259 note 6.

4 As to codes of conduct see PARAS 234-235.

5 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(1)(a).

6 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(1)(b).

7 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(1)(c).

8 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3).

9 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(a). If a standards committee makes a finding under head (3) in the text in respect of a person who is no longer a member of any authority in respect of which it exercises any function under the Local Government Act 2000 Pt 3 (ss 49-83), it must censure that person: Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(2).

10 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(b).

11 As to partial suspension see PARA 256 note 11.

12 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(c).

13 As to suspension see PARA 256 note 10.

14 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(d).

15 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(e).

16 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(f).

17 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(g).

18 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(h).

19 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(i).

20 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(j).

- 21 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(3)(k).
- 22 Subject to the Standards Committee (England) Regulations 2008, SI 2008/1085, regs 19(5) (see the text to note 24), 21 (see the text to notes 35-36).
- 23 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(4).
- 24 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19(5).
- 25 Is a finding under the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 19: see the text and notes 1-24.
- 26 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a).
- 27 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a)(i).
- 28 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a)(ii).
- 29 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a)(iii).
- 30 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a)(iv).
- 31 Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(a)(v).
- 32 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(1)(b). Notice must be published: (1) in at least one newspaper circulating in the area of every authority concerned; and (2) if considered appropriate by the standards committee, on the web page of any authority concerned; and (3) if considered appropriate by the standards committee, in any other publication: see reg 20(1)(b)(i)-(iii).
- 33 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 20(2)-(4).
- 34 As to the president of the Adjudication Panel for England see PARA 278.
- 35 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 21(1)(a). Further provision is made with regard to notice of appeals (see reg 21(2)-(7)); and procedural matters with regard to appeals (see regs 22-25).
- 36 See the Standards Committee (England) Regulations 2008, SI 2008/1085, reg 21(1)(b).

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264. Periodic returns.

A relevant authority in England¹ must send to the Standards Board², within such period beginning with the end of each relevant period³ as the Standards Board may direct⁴, a return⁵ containing information relating to⁶:

- 467 (1) written allegations received⁷ by the standards committee of the authority during the relevant period⁸;
- 468 (2) requests to review a decision not to act so received⁹;
- 469 (3) the exercise during that period of any functions conferred on the standards committee¹⁰;
- 470 (4) the exercise during that period of any functions conferred on the monitoring officer¹¹ of the authority¹²,

as the Standards Board may direct¹³.

- 1 As to the meaning of 'relevant authority' in England see PARA 232 note 4. For these purposes a relevant authority does not include a parish council: Local Government Act 2000 s 66B(9)(a) (as added: see note 6).
- 2 As to the Standards Board for England see PARA 243 et seq.
- 3 'Relevant period' means such period as the Standards Board may direct: Local Government Act 2000 s 66B(2) (as added: see note 6). A direction may specify different periods under s 66B(2) and may make different provision under s 66B(1), (3) or s 66B(5) in relation to returns relating to different periods: s 66B(7) (as added: see note 6).
- 4 Different directions may be given in relation to different relevant authorities or different descriptions of relevant authority: Local Government Act 2000 s 66B(6) (as added: see note 6). Any direction may be varied or revoked by a subsequent direction of the Standards Board for England: s 66B(8) (as added: see note 6).
- 5 The return must be in such form as the Standards Board for England may direct: Local Government Act 2000 s 66B(5) (as added: see note 6).
- 6 Local Government Act 2000 s 66B(1), (3) (s 66B added by the Local Government and Public Involvement in Health Act 2007 s 186).
- 7 In allegations under the Local Government Act 2000 s 57A: see PARA 247. As to the meaning of 'received' see PARA 248 note 5 (definition applied by s 66B(4)).
- 8 Local Government Act 2000 s 66B(3)(a) (as added: see note 6).
- 9 Local Government Act 2000 s 66B(3)(b) (as added: see note 6). Such requests are made under s 57B: see PARA 247.
- 10 Local Government Act 2000 s 66B(3)(c) (as added: see note 6). Functions are conferred on the standards committee under Pt III (ss 49-83): see PARA 232 et seq. As to standards committees see PARA 238.
- 11 In functions conferred under the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq. As to monitoring officers see PARA 429.
- 12 Local Government Act 2000 s 66B(3)(d) (as added: see note 6).
- 13 Local Government Act 2000 s 66B(3) (as added: see note 6).

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265. Request for information from a relevant authority.

If the Standards Board¹ requests a relevant authority in England² to provide specified information relating to the exercise of functions conferred³ on its standards committee⁴ or monitoring officer⁵, the authority must comply with the request by such date as the Standards Board may specify⁶.

- 1 As to the Standards Board for England see PARA 243 et seq.
- 2 As to the meaning of 'relevant authority' in England see PARA 232 note 4. For these purposes a relevant authority does not include a parish council: Local Government Act 2000 s 66B(9)(a) (as added: see note 6).
- 3 In conferred by or under Part III of the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.
- 4 As to standards committees see PARA 238.

5 As to monitoring officers see PARA 429.

6 Local Government Act 2000 s 66C (added by the Local Government and Public Involvement in Health Act 2007 s 186).

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266. Consultation with local commissioners and ombudsmen.

Where at any stage in the course of conducting an investigation under the Local Government Act 2000¹, an ethical standards officer² forms the opinion that the matters which are the subject of the investigation relate partly to a matter which could be the subject of an investigation under Part III of the Local Government Act 1974³, he may consult the appropriate local commissioner⁴ about the investigation and, if he considers it necessary, inform any person who made the allegation which gave rise to the investigation of the steps necessary to initiate a complaint under Part III of the Local Government Act 1974⁵.

If, at any stage in the course of conducting such an investigation, an ethical standards officer forms the opinion that the matters which are the subject of the investigation relate partly to a matter which could be the subject of an investigation under Part 2 of the Public Services Ombudsman (Wales) Act 2005⁶, he may consult the Public Services Ombudsman for Wales⁷ about the investigation and, if he considers it necessary, inform any person who made the allegation which gave rise to the investigation of the steps necessary to initiate a complaint under Part 2 of that Act⁸.

Where at any stage in the course of conducting an investigation under Part III of the Local Government Act 1974, a local commissioner forms the opinion that the matters which are the subject of the investigation relate partly to a matter which could be the subject of an investigation under the Local Government Act 2000⁹, he may consult the Standards Board for England¹⁰ or the standards committee¹¹ of the relevant authority¹² concerned about the investigation and, where a complaint was made about the matter, he may, if he considers it necessary, inform the person initiating the complaint of the steps necessary to make an allegation under the Local Government Act 2000¹³.

If, at any stage in the course of conducting an investigation under Part 2 of the Public Services Ombudsman (Wales) Act 2005, the Public Services Ombudsman for Wales forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under the Local Government Act 2000¹⁴ of this Act he may consult the Standards Board for England or the standards committee of the relevant authority concerned about the investigation and, if he considers it necessary, inform the person initiating the complaint of the steps necessary to make an allegation¹⁵.

These consultations may relate to any matter concerned with the investigation, including the conduct of the investigation¹⁶ and the form, content and publication of any report relating to the investigation¹⁷.

1 ie an investigation under the Local Government Act 2000 s 59: see PARA 250.

2 As to the meaning of 'ethical standards officer' see PARA 243. As to investigations by ethical standards officers see PARA 251 et seq.

- 3 le the Local Government Act 1974 Pt III (ss 23-34).
- 4 As to the meaning of 'local commissioner' see PARA 839; definition applied by the Local Government Act 2000 s 67(5).
- 5 Local Government Act 2000 s 67(1).
- 6 le the Public Services Ombudsman (Wales) Act 2005 Pt 2 (ss 2-4); see PARA 849 et seq.
- 7 As to the Public Services Ombudsman for Wales see PARA 267 et seq.
- 8 Local Government Act 2000 s 67(1A) (added by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 8(a)).
- 9 le under Local Government Act 2000 s 59 (see PARA 250), or regulations under s 66 (see the Standards Committee (England) Regulations 2008, SI 2008/1085; and PARA 258).
- 10 As to the Standards Board for England see PARA 243 et seq.
- 11 As to standards committees see PARA 238.
- 12 As to the meaning of 'relevant authority' see PARA 232 note 4.
- 13 Local Government Act 2000 s 67(2) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 8(b); and the Local Government and Public Involvement in Health Act 2007 ss 182, 196(2), Sch 12 para 17(1), (3)(b)). As to the making of an allegation see the Local Government Act 2000 s 57A; and PARA 247.
- 14 le under Local Government Act 2000 s 59 (see PARA 250), or regulations under s 66 (see the Standards Committee (England) Regulations 2008, SI 2008/1085; and PARA 258).
- 15 Local Government Act 2000 s 67(2A) (added by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 8(c); amended by the Local Government and Public Involvement in Health Act 2007 s 196(2)). As to the making of an allegation see the Local Government Act 2000 s 57A; and PARA 247.
- 16 Local Government Act 2000 s 67(3)(a).
- 17 Local Government Act 2000 s 67(3)(b). Nothing in the Local Government Act 1974 s 32(2) (see PARA 863), the Public Services Ombudsman (Wales) Act 2005 s 26 (see PARA 863) or the Local Government Act 2000 s 63(1) (see PARA 254) applies in relation to the disclosure of information in the course of consultation held in accordance with s 67: s 67(4) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 8(e)).

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(B) INVESTIGATIONS AND DETERMINATIONS IN WALES

267. The Public Services Ombudsman for Wales.

The functions of the Public Services Ombudsman for Wales¹ include those conferred on him by Part III of the Local Government Act 2000² and such other functions as may be conferred on him by order made by the Welsh Ministers³.

The Public Services Ombudsman for Wales may⁴:

- 471 (1) issue guidance to relevant authorities in Wales, other than police authorities, on matters relating to the conduct of members⁵ and co-opted members⁶ of such authorities⁷;
- 472 (2) issue guidance to relevant authorities in Wales, other than police authorities, in relation to the qualifications or experience which monitoring officers⁸ should possess⁹; and
- 473 (3) arrange for any such guidance to be made public¹⁰.

The Welsh Ministers may by regulations make provision which, for the purpose of any provisions of the Public Services Ombudsman (Wales) Act 2005 specified in the regulations, treats¹¹:

- 474 (a) functions of the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005 as including his functions under Part III the Local Government Act 2000¹²; or
- 475 (b) expenses of the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005 as including his expenses under Part III of the Local Government Act 2000¹³.

For the purposes of the law of defamation¹⁴, any statement, whether written or oral, made by a local commissioner in Wales in connection with the exercise of his functions under Part III of the Local Government Act 2000 is absolutely privileged¹⁵.

1 As to the Public Services Ombudsman for Wales see further PARA 843 et seq; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 I.e Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

3 Local Government Act 2000 s 68(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 11(a)). At the date at which this volume states the law no orders had been made under s 68(1). As to investigations in relation to relevant authorities in England and police authorities in Wales see PARA 243 et seq. As to the meaning of 'relevant authority' PARA 232 note 4. For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

As to the Welsh Ministers see PARA 97.

4 Local Government Act 2000 s 68(2) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 11(b)).

5 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

6 As to the meaning of 'co-opted member' see PARA 232 note 3.

7 Local Government Act 2000 s 68(2)(a).

8 As to monitoring officers see PARA 429.

9 Local Government Act 2000 s 68(2)(b).

10 Local Government Act 2000 s 68(2)(c).

11 Local Government Act 2000 s 68(3) (substituted by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 11(c)). The provision which may be made by virtue of s 68(3) includes provision which modifies, or applies or reproduces, with or without modifications, any provisions of the Public Services Ombudsman (Wales) Act 2005: Local Government Act 2000 s 68(4) (amended by the Public Services Ombudsman (Wales) Act 2005 ss 35, 39(2), Sch 4 paras 1, 11(d), Sch 7). At the date at which this volume states the law no such regulations had been made under the Local Government Act 2000 s 68.

12 Local Government Act 2000 s 68(3)(a) (as substituted: see note 11).

13 Local Government Act 2000 s 68(3)(b) (as substituted: see note 11).

14 As to the law of defamation generally see **LIBEL AND SLANDER**.

15 Local Government Act 2000 s 74 (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 18). As to absolute privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 97 et seq.

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268. Investigations by the Public Services Ombudsman for Wales.

The Public Services Ombudsman for Wales¹ may investigate²: (1) cases in which a written allegation is made to him by any person that a member³ or co-opted member⁴, or former member or co-opted member, of a relevant authority⁵ in Wales has failed, or may have failed, to comply with the authority's code of conduct⁶; and (2) other cases in which he considers that a member or co-opted member, or former member or co-opted member, of a relevant authority in Wales has failed, or may have failed, to comply with the authority's code of conduct and which have come to his attention as a result of an investigation under head (1) above⁷. If the Public Services Ombudsman for Wales considers that a written allegation under head (1) above should not be investigated, he must take reasonable steps to give written notification to the person who made the allegation of the decision and the reasons for the decision⁸.

The purpose of an investigation is to determine which of the following findings is appropriate⁹:

- 476 (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned¹⁰;
- 477 (b) that no action needs to be taken in respect of the matters which are the subject of the investigation¹¹;
- 478 (c) that the matters which are the subject of the investigation should be referred to the monitoring officer¹² of the relevant authority concerned¹³; or
- 479 (d) that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales¹⁴ for adjudication by a tribunal¹⁵.

The Welsh Ministers may by order make provision with respect to such investigations, including provision with respect to the obtaining or disclosure of documents or information¹⁶.

The Public Services Ombudsman for Wales may cease such an investigation at any stage before its completion¹⁷ and he may refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned¹⁸.

1 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

2 Local Government Act 2000 s 69(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 13(a)).

3 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

4 As to the meaning of 'co-opted member' see PARA 232 note 3.

5 As to the meaning of 'relevant authority' see PARA 232 note 4.

6 Local Government Act 2000 s 69(1)(a). As to the duty of members to comply with the relevant authority's code of conduct see PARA 236. For the purposes of investigations under s 69 carried out by the Public Services Ombudsman for Wales, ss 60-63 (see PARAS 269-272) apply with modifications: Public Services Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, arts 2, 3, Schs 1,2.

7 Local Government Act 2000 s 69(1)(b).

8 Local Government Act 2000 s 69(2) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 13(b)).

9 See the Local Government Act 2000 s 69(3). As to reports of findings see PARA 273.

10 Local Government Act 2000 s 69(4)(a).

11 Local Government Act 2000 s 69(4)(b).

12 As to monitoring officers see PARA 429.

13 Local Government Act 2000 s 69(4)(c). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the reference in s 69(4)(c) to the monitoring officer of the relevant authority concerned is treated as a reference either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority, and accordingly if the Public Ombudsman for Wales reaches a finding under s 69(4)(c) he must decide to which of those monitoring officers to refer the matters concerned: s 69(5) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 13(c)).

14 As to Adjudication Panel for Wales see PARA 278.

15 Local Government Act 2000 s 69(4)(d). The tribunal referred to in the text is a tribunal falling within s 76(1): see PARA 279.

16 Local Government Act 2000 s 70(1). The provision which may be made by virtue of s 70(1) includes provision which applies or reproduces, with or without modifications: (1) any provisions of ss 60-63 (see PARAS 269-272); or (2) any provisions of the Public Services Ombudsman (Wales) Act 2005 ss 13-15, 25-27 and 32: Local Government Act 2000 s 70(2) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 14(a)). For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 201(1)-(3). As to orders made under the Local Government Act 2000 s 70 see the Public Services Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949.

17 Local Government Act 2000 s 70(3) (amended by Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 14(b)).

18 Local Government Act 2000 s 70(4) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 14(c)). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the Public Services Ombudsman for Wales may, if he thinks it more appropriate than making such a reference as is mentioned in the Local Government Act 2000 s 70(4), refer the matters which are the subject of the investigation to the monitoring officer of that other relevant authority: s 70(5) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 14(c)). Where the Public Services Ombudsman for Wales refers any matters to the monitoring officer of a relevant authority under the Local Government Act 2000 s 70(4), (5) he may give directions to the monitoring officer as to the way in which those matters are to be dealt with: s 73(7) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (8)).

Where any matter is referred to the monitoring officer of a relevant authority under the Local Government Act 2000 s 70(4), the monitoring officer must in respect of that matter conduct an investigation; and report, and if appropriate make recommendations, to the Standards Committee of the relevant authority: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 3(1). For the purposes of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, 'relevant authority' means (1) a county council; (2) a county borough council; (3) a community council; (4) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; (5) a national park authority established under the Environment Act 1995 s 63: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 2 (amended by SI 2005/2929). As to areas and authorities in Wales see PARA 37 et seq. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

As to investigations by monitoring officers see PARA 276.

Where a matter is referred to a monitoring officer of a Police Authority in Wales under the Local Government Act 2000 s 70(4) or (5) he may require the standards committee to convene to consider it: see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483, regs 1(2), 5(2)-(12) (both amended by SI 2008/1085). Further provision is made with regard to the hearings of the standards committee, the findings it may make, notification of any findings made and the possibility to appeal such a finding: see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483, regs 6-13 (amended by SI 2004/2617, and SI 2008/1085).

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269. Investigations by the Public Services Ombudsman for Wales: further provisions.

The Public Services Ombudsman for Wales¹ may arrange for any person to assist him in the conduct of an investigation².

The Public Services Ombudsman for Wales: (1) may not at any time conduct an investigation in relation to a member or co-opted member, or former member or co-opted member, of a relevant authority³ if, within the period of five years ending with that time, the Public Services Ombudsman for Wales has been a member or an officer of the authority or a member of any committee, sub-committee⁴, joint committee or joint sub-committee⁵ of the authority⁶; (2) may, where he is precluded from conducting an investigation by head (1), authorise any person to conduct such an investigation in relation to that member or co-opted member (or former member or co-opted member), to the extent so authorised⁷.

Where the Public Services Ombudsman for Wales is directly or indirectly interested in any matter which is, or is likely to be, the subject of an investigation⁸ he must disclose the nature of his interest to (a) the person by whom the allegation is made, and the member or co-opted member (or former member or co-opted member) against whom the allegation is made⁹; or (b) the member or co-opted member (or former member or co-opted member) concerned¹⁰. He must also disclose the nature of his interest to the relevant authority concerned¹¹, and may not take part in any such investigation¹². However he may authorise any person to conduct such an investigation in relation to that matter to the extent so authorised¹³.

1 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

2 Local Government Act 2000 s 60(1) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1). The reference in the text to an investigation is to an investigation under s 69: see PARA 268.

3 As to the meaning of 'member of a relevant authority' see PARA 232 note 2; and as to the meaning of 'co-opted member' see PARA 232 note 3.

4 As to the meaning of 'committee of a relevant authority' see PARA 232 note 3. As to committees and sub-committees generally see PARA 371 et seq.

5 As to the meaning of 'joint committee or joint sub-committee of a relevant authority' see PARA 232 note 3. As to joint committees generally see PARA 380.

6 Local Government Act 2000 s 60(4)(a) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 1). The validity of any acts of the Public Services Ombudsman for Wales are not affected by any contravention of s 60(4), s 60(5) (see the text and notes 8-13) or s 57(6), Sch 4 para 3(2) (see PARA 243): s 60(6) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 3).

7 Local Government Act 2000 s 60(4)(b) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 1). The authorisation referred to in the text is authorisation under the Public Services Ombudsman (Wales) Act 2005 Sch 1 para 13. See also note 6.

8 le under the Local Government Act 2000 s 69: see PARA 268.

9 Local Government Act 2000 s 60(5)(a)(i) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 2). Head (a) in the text applies where the Local Government Act 2000 s 69(1)(a) applies (see PARA 268). See also note 6.

10 Local Government Act 2000 s 60(5)(a)(ii) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 2). Head (b) in the text applies where the Local Government Act 2000 s 69(1)(b) applies (see PARA 268). See also note 6.

11 Local Government Act 2000 s 60(5)(a)(iii) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 2). See also note 6.

12 Local Government Act 2000 s 60(5)(b) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 2). See also note 6.

13 Local Government Act 2000 s 60(5)(c) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 2). See also note 6. The authorisation referred to in the text is authorisation under the Public Services Ombudsman (Wales) Act 2005 Sch 1 para 13.

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270. Procedure for investigations by the Public Services Ombudsman for Wales.

The procedure for conducting an investigation¹ is such as the Public Services Ombudsman for Wales² considers appropriate in the circumstances of the case³. However, the Public Services Ombudsman for Wales must give any person who is the subject of an investigation an opportunity to comment on any allegation that he has failed, or may have failed, to comply with the relevant authority's⁴ code of conduct⁵. The Public Services Ombudsman for Wales may, if he thinks fit, pay to persons who attend or furnish information for the purposes of an investigation:

- 480 (1) such sums in respect of the expenses properly incurred by them⁶; and
- 481 (2) such allowances by way of compensation for the loss of their time⁷,

as may be determined by the Welsh Ministers⁸. The carrying out of an investigation does not affect any action taken by the relevant authority concerned⁹, or any power or duty of the relevant authority concerned to take further action with respect to any matters which are the subject of the investigation¹⁰.

1 le an investigation under the Local Government Act 2000 s 69: see PARA 268 et seq.

2 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

3 Local Government Act 2000 s 61(1) (s 61 applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 Local Government Act 2000 s 61(2) (as applied with modifications: see note 3). As to the code of conduct see PARAS 234-235. As to the duty of members to comply with the relevant authority's code of conduct see PARA 236.

6 Local Government Act 2000 s 61(3)(a) (as applied with modifications: see note 3).

7 Local Government Act 2000 s 61(3)(b) (as applied with modifications: see note 3).

8 Local Government Act 2000 s 61(3) (as applied with modifications: see note 3). As to the Welsh Ministers see PARA 97.

9 Local Government Act 2000 s 61(4)(a) (as applied with modifications: see note 3). Where a person is no longer a member or co-opted member of the relevant authority concerned, but is a member or a co-opted member of another relevant authority in Wales, any reference in s 61(4) to the relevant authority concerned is treated as including a reference to that other relevant authority: s 61(5). As to the meaning of 'member of a relevant authority' see PARA 232 note 2. As to the meaning of 'co-opted member' see PARA 232 note 3.

10 Local Government Act 2000 s 61(4)(b) (as applied with modifications: see note 3). See also note 9.

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271. Power of the Public Services Ombudsman for Wales to require information.

The Public Services Ombudsman for Wales¹, or a person authorised by him², has a right of access at all reasonable times to every document³ which appears to him necessary for the purpose of conducting an investigation⁴. The Public Services Ombudsman for Wales, or a person authorised by him, may:

- 482 (1) make such inquiries of any person as he thinks necessary for the purpose of conducting an investigation⁵;
- 483 (2) require any person to give him such information or explanation as he thinks necessary for the purpose of conducting an investigation⁶; and
- 484 (3) if he thinks necessary, require any person to attend before him in person for the purpose of making inquiries of that person or requiring that person to give any information or explanation⁷.

The Public Services Ombudsman for Wales, or a person authorised by that ombudsman, may require any person: (a) to furnish information concerning communications between the authority concerned, the Welsh Ministers and any government department⁸; or (b) to produce any correspondence or other documents forming part of any such communications⁹.

A person who without reasonable excuse fails to comply with these requirements¹⁰ is guilty of an offence¹¹.

A relevant authority must provide¹² the Public Services Ombudsman for Wales, or a person authorised by him, with every facility and all information which he may reasonably require for the purposes of conducting an investigation in relation to a member or co-opted member, or former member or co-opted member, of the authority¹³.

To assist him in any investigation, the Public Services Ombudsman for Wales may obtain advice from any person who in his opinion is qualified to give it, and may pay to any such person such fees or allowances as he may determine with the approval of the Secretary of State¹⁴. However, no person may be compelled¹⁵ for the purposes of an investigation to give any evidence or

produce any document which he could not be compelled to give or produce in civil proceedings before the High Court¹⁶.

- 1 As to the Public Services Ombudsman for Wales see PARA 267 et seq.
- 2 As to authorisation see PARA 269.
- 3 For these purposes, any reference to documents includes a reference to information held by means of a computer or in any other electronic form: Local Government Act 2000 s 62(11) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).
- 4 Local Government Act 2000 s 62(1) (amended by the Local Government and Public Involvement in Health Act 2007 ss 191(3)(a), (b), 241, Sch 18 Pt 15; and applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1). The reference in the text is to investigations under the Local Government Act 2000 s 69: see PARA 268 et seq.
- 5 Local Government Act 2000 s 62(2)(a) (s 62(2) applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).
- 6 Local Government Act 2000 s 62(2)(b) (as applied with modifications: see note 4).
- 7 Local Government Act 2000 s 62(2)(c) (as applied with modifications: see note 4).
- 8 Local Government Act 2000 s 62(4)(a) (s 62(4) applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 4). As to the Welsh Ministers see PARA 97.
- 9 Local Government Act 2000 s 62(4)(b) (as applied with modifications: see note 4). No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, is to apply to the disclosure of information in accordance with s 62(4): s 62(5) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1). Where s 62(4) applies, the Crown is not entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings: s 62(6) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).
- 10 Ie the requirements under the Local Government Act 2000 s 62(2) (see the text and notes 5-7), s 62(4) (see the text and notes 8-9).
- 11 Local Government Act 2000 s 62(10). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 62(10). As to the standard scale see PARA 105 note 7.
- 12 Ie without prejudice to the Local Government Act 2000 s 62(1), (2): see the text and notes 1-7.
- 13 Local Government Act 2000 s 62(3) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).
- 14 Local Government Act 2000 s 62(8) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1). As to the Secretary of State see PARA 96.
- 15 Ie subject to the Local Government Act 2000 s 62(5), (6): see note 9.
- 16 Local Government Act 2000 s 62(9) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).

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272. Restrictions on disclosure of information.

Information obtained¹ by the Public Services Ombudsman for Wales² must not be disclosed unless one or more of the following conditions are satisfied³:

- 485 (1) the disclosure is made for the purposes of enabling the Standards Board for England⁴, an ethical standards officer⁵ or the president, deputy president or any tribunal of either of the adjudication panels⁶ to perform their functions under Part III of the Local Government Act 2000⁷;
- 486 (2) the person to whom the information relates has consented to its disclosure⁸;
- 487 (3) the information has previously been disclosed to the public with lawful authority⁹;
- 488 (4) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom¹⁰, and the information in question was not obtained under the provisions relating to the power of the Public Services Ombudsman for Wales to require information¹¹;
- 489 (5) the disclosure is made to the Audit Commission¹² for the purposes of any functions of the Audit Commission or an auditor under the Audit Commission Act 1998¹³;
- 490 (6) the disclosure is made to the Auditor General for Wales for the purposes of any functions of the Auditor General for Wales or an auditor under Part 2 of the Public Audit (Wales) Act 2004¹⁴;
- 491 (7) the disclosure is for the purposes of an investigation or report of an investigation under Part 2 of the Public Services Ombudsman (Wales) Act 2005¹⁵.

The Welsh Ministers¹⁶ or a relevant authority¹⁷ in Wales may give notice in writing to the Public Services Ombudsman for Wales with respect to:

- 492 (a) any document or information specified in the notice¹⁸; or
- 493 (b) any class of documents or information so specified¹⁹,

that in its opinion, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest²⁰. Where such notice is given to the Public Services Ombudsman for Wales, any document or information specified in the notice, or any document or information of a class so specified, may not be disclosed by the Public Services Ombudsman for Wales or any other person²¹.

1 le under the Local Government Act 2000 s 61 (see PARA 270) or s 62 (see PARA 271).

2 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

3 Local Government Act 2000 s 63(1) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5). The Local Government Act 2000 s 63(1)(g)-(j) is added in relation to information obtained by ethical standards officers in England by the Local Government and Public Involvement in Health Act 2007 s 191(4): see PARA 254. It is possible that these amendments are intended to apply, with modifications, to information obtained by the Public Services Ombudsman for Wales.

4 As to the Standards Board for England see PARA 243 et seq.

5 As to the meaning of 'ethical standards officer' see PARA 243. As to the functions of ethical standards officers see PARA 250.

6 As to adjudication panels see PARA 278.

7 Local Government Act 2000 s 63(1)(a) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 6; and applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5). The provisions referred to in the text are those of the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.

8 Local Government Act 2000 s 63(1)(b) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5).

9 Local Government Act 2000 s 63(1)(c) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5).

10 As to the meaning of 'United Kingdom' see PARA 116 note 18.

11 Local Government Act 2000 s 63(1)(d). The provisions referred to in the text are those of s 62(2): see PARA 271.

12 As to the meaning of 'Audit Commission' see PARA 232 note 7. As to the Audit Commission generally see PARA 744 et seq.

13 Local Government Act 2000 s 63(1)(e) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5). As to the Audit Commission Act 1998 see PARA 744 et seq.

14 Local Government Act 2000 s 63(1)(f) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 52, 54; and applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5). The reference in the text to the Public Audit (Wales) Act 2004 is to the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59): see PARA 796 et seq.

15 Local Government Act 2000 s 63(1)(g) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 5). The provision referred to in the text is the Public Services Ombudsman (Wales) Act 2005 Pt 2 (ss 2-34, Schs 2, 3): see **ADMINISTRATIVE LAW**.

16 As to the Welsh Minsters see PARA 97.

17 As to the meaning of 'relevant authority' see PARA 232 note 4.

18 Local Government Act 2000 s 63(2)(a) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 6).

19 Local Government Act 2000 s 63(2)(b) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 6).

20 Local Government Act 2000 s 63(2) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 3, Sch 2 para 6).

21 Local Government Act 2000 s 63(3) (applied with modifications by the Public Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 2, Sch 1).

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273. Reports.

Where the Public Services Ombudsman for Wales¹ determines in relation to any case that it is appropriate to find that there is no evidence of any failure to comply with the code of conduct² of the relevant authority³ or that no action needs to be taken in respect of the matters which are the subject of the investigation⁴:

494 (1) he may produce a report on the outcome of his investigation⁵;

495 (2) he may provide a summary of any such report to any newspapers circulating in the area of the relevant authority concerned⁶;

496 (3) he must send to the monitoring officer⁷ of the relevant authority concerned a copy of any such report⁸; and

- 497 (4) where he does not produce any such report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation⁹.

Where the Public Services Ombudsman for Wales determines in relation to any case that it is appropriate to find that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority concerned¹⁰ he must¹¹:

- 498 (a) produce a report on the outcome of his investigation¹²;
 499 (b) refer the matters¹³ which are the subject of the investigation to the monitoring officer of the relevant authority concerned¹⁴; and
 500 (c) send a copy of the report to the monitoring officer, and the standards committee¹⁵, of the relevant authority concern¹⁶.

Where the Public Services Ombudsman for Wales determines in relation to any case that it is appropriate to find that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales¹⁷ for adjudication by a tribunal¹⁸ he must¹⁹:

- 501 (i) produce a report on the outcome of his investigation²⁰;
 502 (ii) refer the matters which are the subject of the investigation to the president of the Adjudication Panel for Wales for adjudication by a tribunal²¹; and
 503 (iii) send a copy of the report to the monitoring officer of the relevant authority concerned and to the president of the Adjudication Panel for Wales²².

A report may cover more than one investigation²³ in relation to any members²⁴ or co-opted members²⁵, or former members or co-opted members, of the same relevant authority²⁶.

The Public Services Ombudsman for Wales must inform any person who is the subject of an investigation²⁷, and take reasonable steps to inform any person who made any allegation which gave rise to the investigation²⁸, of the outcome of the investigation²⁹.

1 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

2 As to the code of conduct see PARAS 234-235.

3 Ie where a local commissioner makes a finding under the Local Government Act 2000 s 69(4)(a): see PARA 268. As to the meaning of 'relevant authority' see PARA 232 note 4.

4 See the Local Government Act 2000 s 71(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 15(a)). The finding referred to in the text is a finding under the Local Government Act 2000 s 69(4)(b): see PARA 268.

5 Local Government Act 2000 s 71(1)(a). As to investigations by the Public Services Ombudsman for Wales see PARA 268. As to interim reports of a local commissioner in Wales see PARA 274.

6 Local Government Act 2000 s 71(1)(b). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the references in s 71(1)(b), s 71(1)(c) (see the text and notes 7-8), s 71(1)(d) (see the text to note 9), s 71(2)(c) (see the text and notes 15-16) and s 71(3)(c) (see the text to note 22) to the relevant authority concerned are to be treated as including references to that other relevant authority: s 71(4)(a).

7 As to monitoring officers see PARA 429.

8 Local Government Act 2000 s 71(1)(c). See note 6.

9 Local Government Act 2000 s 71(1)(d). See note 6.

10 Ie where the Public Services Ombudsman for Wales makes a finding under the Local Government Act 2000 s 69(4)(c): see PARA 268.

11 See the Local Government Act 2000 s 71(2) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 15(a)). Where the Public Services Ombudsman for Wales refers any matters to the monitoring officer of a relevant authority under Local Government Act 2000 s 71(2) he may give directions to the monitoring officer as to the way in which those matters are to be dealt with: s 73(7) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (8)).

Where any matter is referred to the monitoring officer of a relevant authority under the Local Government Act 2000 s 71(2), the monitoring officer must consider any report sent to him by the Public Services Ombudsman for Wales and, if appropriate, make recommendations to the Standards Committee of the relevant authority: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 3(2) (amended by SI 2006/362). As to the meaning of 'relevant authority' for these purposes see PARA 268 note 18.

Where a matter is referred to a monitoring officer of a police authority in Wales under the Local Government Act 2000 s 71(2) he must send a copy of any report received from the Public Services Ombudsman for Wales who has referred the matter to any member who is the subject of such a report, and arrange for the standards committee of that authority to meet to consider that report: see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483, regs 1(2), 5(1) (both amended by SI 2008/1085). Further provision is made with regard to the hearings of the standards committee, the findings they may make, notification of any findings made and the possibility to appeal such a finding: see the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483, regs 6-13 (amended by SI 2004/2617, and SI 2008/1085). As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

12 Local Government Act 2000 s 71(2)(a).

13 Ie subject to the Local Government Act 2000 s 71(4)(b): see note 14.

14 Local Government Act 2000 s 71(2)(b). Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the Public Services Ombudsman for Wales who reaches a finding under s 69(4)(c) (see PARA 268) must refer the matters concerned either to the monitoring officer of the relevant authority concerned or to the monitoring officer of that other relevant authority: s 71(4)(b).

15 As to standards committees see PARA 238.

16 Local Government Act 2000 s 71(2)(c). See note 6.

17 As to the Adjudication Panel for Wales see PARA 278.

18 Ie where a local commissioner makes a finding under the Local Government Act 2000 s 69(4)(d): see PARA 268. The tribunal referred to in the text is a tribunal falling within s 76(1): see PARA 279.

19 See the Local Government Act 2000 s 71(3) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 15(a)).

20 Local Government Act 2000 s 71(3)(a).

21 Local Government Act 2000 s 71(3)(b).

22 Local Government Act 2000 s 71(3)(c). See note 6.

23 Ie more than one investigation under the Local Government Act 2000 s 69: see PARA 268.

24 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

25 As to the meaning of 'co-opted member' see PARA 232 note 3.

26 Local Government Act 2000 s 71(5).

27 Local Government Act 2000 s 71(6)(a).

28 Local Government Act 2000 s 71(6)(b).

29 Local Government Act 2000 s 71(6) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 15(c)).

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274. Interim reports.

Where he considers it necessary in the public interest, the Public Services Ombudsman for Wales¹ may, before the completion of an investigation², produce an interim report³. An interim report may cover more than one investigation in relation to any members⁴ or co-opted members⁵, or former members or co-opted members, of the same relevant authority⁶. Where the prima facie evidence is such that it appears to the Public Services Ombudsman for Wales:

- 504 (1) that the person who is the subject of the interim report has failed to comply with the code of conduct⁷ of the relevant authority concerned⁸;
- 505 (2) that the nature of that failure is such as to be likely to lead to disqualification⁹; and
- 506 (3) that it is in the public interest to suspend¹⁰ or partially suspend¹¹ that person immediately¹²,

the interim report may include a recommendation that that person should be suspended or partially suspended from being a member or co-opted member of the relevant authority¹³ concerned for a period which does not exceed six months or, if shorter, the remainder of the person's term of office¹⁴. Where the Public Services Ombudsman for Wales produces an interim report which contains such a recommendation, he must refer the matters which are the subject of the report to the president of the Adjudication Panel for Wales¹⁵ for adjudication by a tribunal¹⁶.

A copy of any report must be given to: (a) any person who is the subject of the report¹⁷; (b) the monitoring officer¹⁸ of the relevant authority¹⁹ concerned²⁰; and (c) the president of the Adjudication Panel for Wales²¹.

1 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

2 Ie an investigation under the Local Government Act 2000 s 69: see PARA 268.

3 Local Government Act 2000 s 72(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 16). As to reports of the Public Services Ombudsman for Wales see PARA 273.

4 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

5 As to the meaning of 'co-opted member' see PARA 232 note 3.

6 Local Government Act 2000 s 72(2). As to the meaning of 'relevant authority' see PARA 232 note 4.

7 As to the meaning of 'code of conduct' see PARA 137. As to the duty of members to comply with the relevant authority's code of conduct see PARA 138.

8 Local Government Act 2000 s 72(3)(a).

9 Local Government Act 2000 s 72(3)(b). The disqualification referred to in the text is a disqualification under s 79(4)(b): see PARA 283.

10 As to the meaning of 'suspend' see PARA 256 note 10.

11 As to the meaning of 'partially suspend' see PARA 256 note 11.

12 Local Government Act 2000 s 72(3)(c).

13 Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, this reference to the relevant authority concerned is treated as a reference to that other relevant authority: Local Government Act 2000 s 72(6)(a).

14 Local Government Act 2000 s 73(3) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 16).

15 As to the Adjudication Panel for Wales see PARA 278.

16 Local Government Act 2000 s 72(4) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 16). The tribunal referred to in the text is a tribunal falling within s 76(2): see PARA 279.

17 Local Government Act 2000 s 72(5)(a).

18 As to monitoring officers see PARA 429.

19 Where a person is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, this reference to the relevant authority concerned is treated as including a reference to that other relevant authority: Local Government Act 2000 s 72(6)(b).

20 Local Government Act 2000 s 72(5)(b).

21 Local Government Act 2000 s 72(5)(c).

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275. Power to make provision for matters referred to monitoring officers.

The Welsh Ministers¹ may by regulations make provision in relation to the way in which any matters referred to the monitoring officer² of a relevant authority³ are to be dealt with⁴. The regulations may include provision for or in connection with⁵:

- 507 (1) enabling a monitoring officer of a relevant authority to conduct an investigation in respect of any matters referred to him⁶;
- 508 (2) enabling a monitoring officer of a relevant authority to make a report or recommendations to the standards committee⁷ of the authority in respect of any matters referred to him⁸;
- 509 (3) enabling a standards committee of a relevant authority to consider any report or recommendations made to it by a monitoring officer of the authority, including provision with respect to the procedure to be followed by the standards committee⁹;
- 510 (4) enabling a standards committee of a relevant authority, following its consideration of any such report or recommendations, to take any action prescribed by the regulations, including action against any member¹⁰ or co-opted member¹¹, or former member or co-opted member, of the authority who is the subject of any such report or recommendation¹²;
- 511 (5) the publicity given to any such reports, recommendations or action¹³.

The provision which may be made by virtue of head (1) above includes provision for or in connection with¹⁴: (a) conferring powers on a monitoring officer of a relevant authority to enable him to conduct an investigation in respect of any matters referred to him¹⁵; (b) conferring rights, including the right to make representations, on any member or co-opted member, or former member or co-opted member, of a relevant authority who is the subject of any such investigation¹⁶.

The provision which may be made by virtue of head (4) above includes provision for or in connection with¹⁷: (i) enabling a standards committee of a relevant authority to censure a member or co-opted member, or former member or co-opted member, of the authority¹⁸; (ii) enabling a standards committee of a relevant authority to suspend¹⁹ or partially suspend²⁰ a person from being a member or co-opted member of the authority for a limited period²¹; (iii) conferring a right of appeal on a member or co-opted member, or former member or co-opted member, of a relevant authority in respect of any action taken against him²².

1 As to the Welsh Ministers see PARA 97.

2 As to monitoring officers see PARA 429.

3 He referred to a monitoring officer of a relevant authority under the Local Government Act 2000 s 70(4), (5) (see PARA 268) or s 71(2) or (4) (see PARA 273). As to the meaning of 'relevant authority' see PARA 232 note 4.

4 Local Government Act 2000 s 73(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 194(1), (8)). At the date at which this volume states the law the following regulations had been made under s 73: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281 (amended by SI 2005/761, SI 2005/2929, SI 2006/362).

In its application to police authorities in Wales, s 73(1) has effect as if for the reference to the Welsh Ministers there were substituted a reference to the Secretary of State: s 73(6). For these purposes, 'police authority' has the same meaning as under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1). As to the Secretary of State see PARA 96.

5 Local Government Act 2000 s 73(2). Nothing in s 73(2) affects the generality of the power under s 73(1) (see the text and notes 1-4): s 73(5).

6 Local Government Act 2000 s 73(2)(a). See note 5.

7 As to standards committees see PARA 238.

8 Local Government Act 2000 s 73(2)(b). See note 5.

9 Local Government Act 2000 s 73(2)(c). See note 5.

10 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

11 As to the meaning of 'co-opted member' see PARA 232 note 3.

12 Local Government Act 2000 s 73(2)(d). See note 5.

13 Local Government Act 2000 s 73(2)(e). See note 5.

14 Local Government Act 2000 s 73(3). Nothing in s 73(3) affects the generality of the power under s 73(1) (see the text and notes 1-4): s 73(5).

15 Local Government Act 2000 s 73(3)(a). See note 14.

16 Local Government Act 2000 s 73(3)(b). See note 14.

17 Local Government Act 2000 s 73(4). Nothing in s 73(4) affects the generality of the power under s 73(1) (see the text and notes 1-4): s 73(5).

18 Local Government Act 2000 s 73(4)(a). See note 17.

19 As to the meaning of 'suspend' see PARA 256 note 10.

20 As to the meaning of 'partially suspend' see PARA 256 note 11.

21 Local Government Act 2000 s 73(4)(b). See note 17.

22 Local Government Act 2000 s 73(4)(c). See note 17.

UPDATE

275 Power to make provision for matters referred to monitoring officers

NOTE 4--SI 2001/2281 further amended: SI 2009/2578.

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276. Investigations by monitoring officers.

When conducting an investigation¹ the monitoring officer² may follow such procedures as he considers appropriate in the circumstances of the case and in particular may³:

- 512 (1) make such inquiries of any person as he thinks necessary for the purposes of carrying out the investigation⁴;
- 513 (2) require any person to provide him with such information, explanation or documents⁵ as he considers necessary⁶;
- 514 (3) require any member or co-opted member⁷ or officer⁸ of a relevant authority⁹ to appear before him for the purposes of heads (1) and (2)¹⁰.

In conducting the investigation, the monitoring officer may be assisted by any person¹¹.

Where a person has attended before the monitoring officer or provided information or assistance for the purposes of the investigation the monitoring officer may, subject to the standards committee's¹² authorisation, pay to that person such sums in respect of expenses properly incurred by him¹³, and such allowances by way of compensation for the loss of his time, as may be determined by the Welsh Ministers¹⁴.

The monitoring officer may also where necessary obtain expert or other advice from any person who is in his opinion particularly qualified to assist in conducting the investigation¹⁵. Where a person has given such advice the monitoring officer may pay to that person such fees or allowances incurred subject to the maxima set out in the relevant authority's allowances scheme¹⁶.

Information obtained by a monitoring officer when conducting an investigation must not be disclosed unless¹⁷:

- 515 (a) the disclosure is made for the purposes of enabling a monitoring officer or standards committee to perform its functions¹⁸;
- 516 (b) the disclosure is made for the purpose of enabling the Public Services Ombudsman for Wales to carry out his functions¹⁹;
- 517 (c) the person to whom the information relates has consented to its disclosure²⁰;
- 518 (d) the information has previously been disclosed to the public with lawful authority²¹;

- 519 (e) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom²² and the information in question was not obtained as a result of personal inquiries²³ of the person subject to the criminal proceedings²⁴;
- 520 (f) the disclosure is made to the Audit Commission for the purposes of any function of the Audit Commission or an auditor²⁵; or
- 521 (g) the disclosure is made to the Auditor General for Wales for the purposes of any function of his or of an auditor²⁶.

After concluding an investigation, the monitoring officer must (i) produce a report on the findings of his investigation and, if appropriate, may make recommendations to the standards committee of the relevant authority concerned²⁷; (ii) send a copy of the report to any person who is the subject of the investigation²⁸; and (iii) take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation²⁹.

1 le under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 3(1)(a): see PARA 268 note 18.

2 As to monitoring officers see PARA 429.

3 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(1).

4 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(1)(a).

5 For these purposes 'documents' includes a reference to information held by means of a computer or in any other electronic form: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(2).

6 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(1)(b).

7 As to the meaning of 'member of a relevant authority' see PARA 232 note 2. As to the meaning of 'co-opted member' see PARA 232 note 3.

8 As to officers of a relevant authority see PARA 425 et seq.

9 As to the meaning of 'relevant authority' for these purposes see PARA 268 note 18.

10 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(1)(c).

11 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(2).

12 As to standards committees see PARA 238.

13 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(4)(a).

14 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(4)(b). As to the Welsh Ministers see PARA 97.

15 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(3).

16 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4(5).

17 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1).

18 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(a).

19 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(b) (amended by 2006/362). As to the Public Services Ombudsman for Wales see PARA 267 et seq.

20 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(c).

21 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(d).

22 As to the meaning of 'United Kingdom' see PARA 116 note 18.

23 In personal inquiries under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 4: see the text and notes 1-16.

24 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(e) (amended by SI 2005/761).

25 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(f). The functions referred to in the text are those under the Audit Commission Act 1998. As to the meaning of 'Audit Commission' see PARA 232 note 7. As to the Audit Commission generally see PARA 744 et seq.

26 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 5(1)(g) (added by SI 2005/761). The functions referred to in the text are those under the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59). As to the Auditor General for Wales see PARA 796 et seq.

27 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 6(a).

28 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 6(b).

29 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 6(c).

UPDATE

276 Investigations by monitoring officers

NOTE 14--SI 2001/2281 reg 4(4)(b) amended: SI 2009/2578.

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277. Determinations by standards committee and appeals.

After receiving a report and any recommendations from the monitoring officer¹, or a report from the Public Services Ombudsman for Wales² together with any recommendations of the monitoring officer³, the standards committee⁴ must determine either⁵:

- 522 (1) that there is no evidence of any failure to comply with the code of conduct⁶ of the relevant authority concerned and must notify any person who is the subject of

the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly⁷; or
 523 (2) that any person who is the subject of the investigation should be given the opportunity to make representations, either orally or in writing in respect of the findings of the investigation and any allegation that he has failed, or may have failed, to comply with the relevant authority's code of conduct⁸.

Subject to any express provision⁹, the practice and procedure to be followed in exercising its functions with regard to determinations is for the standards committee of the relevant authority in Wales¹⁰ to decide¹¹.

The standards committee may require the investigating officer¹² to attend before it when considering any representations made by any person who is the subject of the investigation (or if no such representations are made, at any reasonable time), for the purpose of presenting his report or explaining any of the matters contained in it (but not otherwise)¹³. If any person who is the subject of the investigation fails to make representations¹⁴ the standards committee may, unless it is satisfied that there is sufficient reason for such failure, consider the monitoring officer's report and make a determination in that person's absence¹⁵, or give that person a further opportunity to make representations¹⁶. Where appropriate the standards committee has power to censure any member or co-opted member¹⁷ (or former member or co-opted member) of the relevant authority, or suspend or partially suspend a member or co-opted member for a period not exceeding six months¹⁸.

After considering any representations, a standards committee must determine¹⁹:

- 524 (a) that there is no evidence of any failure to comply with the code of conduct of the relevant authority and that therefore no action needs to be taken in respect of the matters which are the subject of the investigation²⁰;
- 525 (b) that a member or co-opted member (or former member or co-opted member) of a relevant authority has failed to comply with the relevant authority's code of conduct but that no action needs to be taken in respect of that failure²¹;
- 526 (c) that a member or co-opted member (or former member or co-opted member) of the relevant authority has failed to comply with the authority's code of conduct and should be censured²²; or
- 527 (d) that a member or co-opted member of a relevant authority has failed to comply with the authority's code of conduct and should be suspended or partially suspended from being a member or co-opted member of that authority for a period not exceeding six months²³.

After making a determination²⁴ the standards committee must notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman for Wales accordingly, giving reasons for the decision²⁵.

Where a standards committee determines that a person has failed to comply with the code of conduct of the relevant authority concerned²⁶, that person may appeal against the determination to an appeals tribunal drawn from the Adjudication Panel for Wales²⁷.

1 le a report and recommendations under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 6: see PARA 276. As to monitoring officers see PARA 429.

2 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

3 See PARA 276.

- 4 As to standards committees see PARA 238.
- 5 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 7.
- 6 As to codes of conduct see PARAS 234-235.
- 7 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 7(a) (amended by SI 2006/362).
- 8 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 7(b).
- 9 le express provision in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, or in the Standards Committees (Wales) Regulations 2001, SI 2001/2283.
- 10 As to the meaning of 'relevant authority' for these purposes see PARA 268 note 18.
- 11 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(1).
- 12 For these purposes 'investigating officer' means: (1) in the case of an investigation undertaken by or on behalf of the Public Services Ombudsman for Wales and referred to the monitoring officer of the relevant authority under the Local Government Act 2000 s 71(2) (see PARA 273), the person who conducted the investigation; or (2) in the case of an investigation referred to him under the Local Government Act 2000 s 70(4) (see PARA 268), the monitoring officer of the relevant authority: Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(3) (amended by SI 2006/362).
- 13 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(2).
- 14 le representations under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 7(b): see the text to note 8.
- 15 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(4)(a).
- 16 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(4)(b).
- 17 As to the meanings of 'member' and 'co-opted member' of a relevant authority see PARA 232 notes 2, 3.
- 18 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 8(5). Any period of suspension or partial suspension must commence on the day after: (1) the expiry of the time allowed to lodge a notice of appeal under reg 10(2) (see note 27); (2) receipt of notification of the conclusion of any appeal in accordance with reg 12(a)(i) or (b); or (3) a further determination by the standards committee made after receiving a recommendation from an appeals tribunal under reg 12(a)(ii), whichever occurs last: reg 8(6).
- 19 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1).
- 20 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1)(a).
- 21 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1)(b).
- 22 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1)(c).
- 23 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1)(d).
- 24 le in accordance with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1), (2).

25 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(3) (amended by SI 2006/362).

26 le determines under the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 9(1): see the text and notes 19-23.

27 Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, SI 2001/2281, reg 10(1). The appeal must be instigated by giving notice in writing within 21 days of receiving notification of the standards committee's determination to the appropriate address: see reg 10(2). The notice of appeal must specify: (1) the grounds for appeal; and (2) whether or not the person giving notice of appeal consents to the appeal being conducted by way of written representations: reg 10(3). Further provision is made for an appeal to the Adjudication Panel for Wales: see regs 10(2), (4), 11-14. As to the Adjudication Panel for Wales see PARA 278.

UPDATE

277 Determinations by standards committee and appeals

TEXT AND NOTES 12, 13--SI 2001/2281 reg 8(2), (3) now reg 8(2)-(3D) (substituted by SI 2009/2578).

NOTE 27--SI 2001/2281 regs 10(2), 11 amended: SI 2009/2578.

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D. ADJUDICATIONS

278. Adjudication panels.

The Local Government Act 2000 established the Adjudication Panel for England and the Adjudication Panel for Wales (Panel Dyfarnu Cymru), each consisting of a panel of persons eligible for membership of tribunals¹ drawn from that panel².

The members of the Adjudication Panel for England are appointed by the Lord Chancellor³. The Lord Chancellor must appoint one of the members of the Adjudication Panel for England as president of the panel⁴ and may appoint one of those members as deputy president of the panel⁵. Such members of the Adjudication Panel for England as the Lord Chancellor thinks fit must possess such qualifications as may be determined by the Lord Chancellor⁶. The president and deputy president, if any, of the Adjudication Panel for England are responsible⁷ for training the members of the panel⁸, and for issuing guidance on how tribunals drawn from the panel are to reach decisions⁹. The Lord Chancellor must obtain the consent of the Secretary of State¹⁰ before making any appointment¹¹ or any determination¹².

The members of the Adjudication Panel for Wales are appointed by the Welsh Ministers¹³ on such terms and conditions as they may determine¹⁴. The Welsh Ministers: (1) must appoint one of the members of the Adjudication Panel for Wales as president of the panel¹⁵; and (2) may appoint one of those members as deputy president of the panel¹⁶. Such members of the Adjudication Panel for Wales as the Welsh Ministers think fit must possess such qualifications as may be determined by the Welsh Ministers¹⁷. The president and deputy president, if any, of the Adjudication Panel for Wales are responsible for training the members of the panel¹⁸, and for issuing guidance on how tribunals drawn from the panel are to reach decisions¹⁹.

1 As to tribunals see PARA 279.

2 See the Local Government Act 2000 s 75(1), (2).

3 Local Government Act 2000 s 75(3). The Lord Chancellor's functions under s 75 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Any appointment to the office of president of the Adjudication Panel for England, deputy president of the Adjudication Panel for England or member of the Adjudication Panel for England in exercise of the function under the Local Government Act 2000 s 75(3) or (4) (see the text to notes 4-5) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3, in accordance with ss 85-93, 96: see **COURTS**.

4 Local Government Act 2000 s 75(4)(a).

5 Local Government Act 2000 s 75(4)(b).

6 Local Government Act 2000 s 75(7).

7 Local Government Act 2000 s 75(9).

8 Local Government Act 2000 s 75(9)(a).

9 Local Government Act 2000 s 75(9)(b). A failure on the part of a case tribunal to refer to guidance issued by the president of the adjudications panel will not necessarily mean that there has been an error of principle; it may be assumed that the case tribunal, as a specialist tribunal, would have any guidance in mind even though it may not be specifically referred to in a decision: *Sloam v Standards Board for England* [2005] EWHC 124 (Admin), [2006] LGR 71. Such an assumption will be justified in those cases where the appellant's conduct, and the tribunal's response by way of penalty, fall clearly within any guidelines. Where, however, there is (to put it at its lowest) scope for debate as to where the member's conduct should be placed on the scale of seriousness, and what the appropriate response should be by way of penalty, a brief explanation of whether, and if so how, the guidelines have been applied will be necessary, if only to ensure that the tribunal's reasoning is adequate: *Sanders v Kingston (No 2)* [2005] EWHC 2132 (Admin), [2006] LGR 111, [2005] 44 LS Gaz R 33.

10 As to the Secretary of State see PARA 96.

11 Ie any appointment under the Local Government Act 2000 s 75(3) or s 75(4): see the text and notes 3-5.

12 Local Government Act 2000 s 75(11). The reference in the text to any determination is to any determination under s 75(7): see the text to note 6.

13 As to the Welsh Ministers see PARA 97.

14 Local Government Act 2000 s 75(5).

15 Local Government Act 2000 s 75(6)(a).

16 Local Government Act 2000 s 75(6)(b).

17 Local Government Act 2000 s 75(8).

18 Local Government Act 2000 s 75(10)(a).

19 Local Government Act 2000 s 75(10)(b).

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279. Case tribunals and interim case tribunals.

Adjudications in respect of matters referred to the president of the relevant adjudication panel¹ are to be conducted by case tribunals² or interim case tribunals³ consisting of not less than three members⁴ of the panel⁵.

The president of the relevant adjudication panel, or in his absence the deputy president⁶, appoints the members of any case tribunal or interim case tribunal⁷. The president or the deputy president of the relevant adjudication panel may be a member of a case tribunal or interim case tribunal drawn from the panel⁸.

A member of the relevant adjudication panel may not at any time be a member of a case tribunal or of an interim case tribunal drawn from the panel which is to adjudicate on a matter relating to a member⁹ or co-opted member¹⁰, or former member or co-opted member, of a relevant authority¹¹ if, within the period of five years ending with that time, the member of the panel has been a member or an officer of the authority or a member of any committee or sub-committee¹² or joint committee or joint sub-committee¹³ of the authority¹⁴.

A member of the relevant adjudication panel who is directly or indirectly interested in any matter which is, or is likely to be, the subject of an adjudication conducted by a case tribunal or interim case tribunal: (1) must disclose the nature of his interest to the president or deputy president of that panel¹⁵; and (2) may not be a member of a case tribunal or interim case tribunal which conducts an adjudication in relation to that matter¹⁶.

A person who is a member of an interim case tribunal which, as a result of an investigation¹⁷, conducts an adjudication in relation to any person may not be a member of a case tribunal which, on the conclusion of that investigation, subsequently conducts an adjudication in relation to that person¹⁸.

The Lord Chancellor may issue guidance with respect to the composition of case tribunals or interim case tribunals drawn from the Adjudication Panel for England¹⁹. The Lord Chancellor must consult the Lord Chief Justice and obtain the consent of the Secretary of State²⁰ before issuing any such guidance²¹. The Welsh Ministers may issue guidance with respect to the composition of case tribunals or interim case tribunals drawn from the Adjudication Panel for Wales²², and may incur expenditure for the purpose of providing administrative support to the Adjudication Panel for Wales²³.

A case tribunal or an interim case tribunal drawn from the relevant adjudication panel may conduct a single adjudication in relation to two or more matters which are referred to the president of the panel²⁴.

1 For these purposes, 'relevant adjudication panel' means: (1) in relation to matters referred or to be referred by an ethical standards officer, the Adjudication Panel for England; (2) in relation to matters referred or to be referred by in the Public Services Ombudsman for Wales, the Adjudication Panel for Wales: Local Government Act 2000 s 83(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 24(b)). As to adjudication panels generally see PARA 278. As to the meaning of 'ethical standards officer' see PARA 243. As to the Public Services Ombudsman for Wales see PARA 267.

2 Matters referred under the Local Government Act 2000 s 64(3) (see PARA 255) or s 71(3) (see PARA 273) are dealt with by case tribunals.

3 Matters referred under the Local Government Act 2000 s 65(4) (see PARA 256) or s 72(4) (see PARA 274) are dealt with by interim case tribunals.

4 As to tribunal members see PARA 278.

5 See the Local Government Act 2000 ss 76(1), (2), 83(1).

6 As to the appointment of the president and deputy president see PARA 278. Where there is no deputy president of the relevant adjudication panel, the reference in the Local Government Act 2000 s 76(3) and s 76(8) (see the text to notes 15-16) to the deputy president is to be treated as a reference to such member of the panel as the Lord Chief Justice or, as the case may require, the Welsh Ministers may specify: s 76(9) (amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 291(1), (2)). The Lord Chief Justice must consult the Lord Chancellor before specifying a member of the panel in accordance with Local Government Act 2000 s 76(9): s 76(9A) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 291(1), (3)). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4): see **COURTS**) to exercise its functions under Local Government 2000 s 76: s 76(12) (added by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 291(1), (5)). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN**

RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the transfer of powers to the Welsh Ministers see PARA 97; and as to the Welsh Ministers generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515.

7 Local Government Act 2000 s 76(3).

8 Local Government Act 2000 s 76(6).

9 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

10 As to the meaning of 'co-opted member' see PARA 232 note 3.

11 As to the meaning of 'relevant authority' see PARA 232 note 4.

12 As to the meaning of 'committee of a relevant authority' see PARA 232 note 3. As to committees and sub-committees generally see PARA 371 et seq.

13 As to the meaning of 'joint committee or joint sub-committee of a relevant authority' see PARA 232 note 3. As to joint committees generally see PARA 380.

14 Local Government Act 2000 s 76(7).

15 Local Government Act 2000 s 76(8)(a).

16 Local Government Act 2000 s 76(8)(b).

17 le under the Local Government Act 2000 s 59 (see PARA 250) or s 69 (see PARA 268).

18 Local Government Act 2000 s 76(10).

19 Local Government Act 2000 s 76(11). The Lord Chancellor's function under s 76(11) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

20 As to the Secretary of State see PARA 96.

21 Local Government Act 2000 s 76(12) (amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 para 291(1), (4)).

22 Local Government Act 2000 s 76(13).

23 Local Government Act 2000 s 76(14).

24 Local Government Act 2000 s 76(4), (5).

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280. Procedural matters relating to adjudications.

A person who is the subject of an adjudication conducted by a case tribunal¹ or interim case tribunal² may appear before the tribunal in person or be represented by counsel or a solicitor³ or by any other person whom he desires to represent him⁴.

The Secretary of State⁵ may by regulations make such provision as appears to him to be necessary or expedient with respect to adjudications by case tribunals or interim case tribunals drawn from the Adjudication Panel for England⁶. The president⁷ of the Adjudication Panel for England may, after consultation with the Secretary of State, give directions as to the practice and procedure to be followed by tribunals drawn from the panel⁸.

The Welsh Ministers⁹ may by regulations make such provision as appears to them to be necessary or expedient with respect to adjudications by case tribunals or interim case tribunals drawn from the Adjudication Panel for Wales¹⁰. The president of the Adjudication Panel for Wales may, after consultation with the Welsh Ministers, give directions as to the practice and procedure to be followed by tribunals drawn from the panel¹¹.

Regulations may include provision for¹²:

- 528 (1) requiring persons to attend adjudications to give evidence and produce documents¹³ and for authorising the administration of oaths to witnesses¹⁴;
- 529 (2) requiring persons to furnish further particulars¹⁵;
- 530 (3) prescribing the procedure to be followed in adjudications, including provision as to the persons entitled to appear and to be heard on behalf of persons giving evidence¹⁶;
- 531 (4) the award of costs or expenses, including provision with respect to interest and provision with respect to the enforcement of any such award¹⁷;
- 532 (5) taxing or otherwise settling any such costs or expenses, and for enabling such costs to be taxed in a county court¹⁸;
- 533 (6) the registration and proof of decisions and awards of tribunals¹⁹.

A person who without reasonable excuse fails to comply with any requirement imposed by virtue of head (1) or head (2) above is guilty of an offence and liable on summary conviction to a fine²⁰.

Provision has been made with regard to the acknowledgement, registration and notification of a reference to the Adjudication Panel for Wales²¹; the accused person's acknowledgement of receipt of, and reply to, such notice²²; written representations by the accused²³; directions in preparation for a hearing²⁴; the provision of particulars²⁵; the disclosure of documents and other material²⁶; the summoning of witnesses²⁷; the attendance of investigating officers²⁸; evidence by experts²⁹; varying or setting aside directions³⁰; pre-hearing reviews³¹; giving notice to persons concerned of the place and time of the hearing³²; giving public notice of the hearing³³; the power to determine an adjudication without a hearing³⁴; the failure of parties to attend³⁵; procedure³⁶; the decision³⁷; orders for cost and expenses³⁸; irregularities³⁹; registration and publication of decisions⁴⁰; proof of documents and certificate of decisions⁴¹; the service of documents and related matters⁴²; and time⁴³.

1 As to the meaning of 'case tribunals' see PARA 279.

2 As to the meaning of 'interim case tribunals' see PARA 279.

3 Local Government Act 2000 s 77(1)(a).

4 Local Government Act 2000 s 77(1)(b).

5 As to the Secretary of State see PARA 96.

6 Local Government Act 2000 s 77(2). For regulations made under s 77(2) see the Case Tribunals (England) Regulations 2008, SI 2008/2938. As to adjudication panels see PARA 278.

7 As to the appointment of the president and deputy president see PARA 278.

8 Local Government Act 2000 s 77(3). For the directions as to practice and procedure see the Adjudication Panel for England's website, accessible at the date this volume states the law at www.adjudicationpanel.co.uk.

9 As to the Welsh Ministers see PARA 97.

10 Local Government Act 2000 s 77(4). For regulations made under s 77(4) see the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288; and notes 21-43.

11 Local Government Act 2000 s 77(5). For the directions as to practice and procedure see the Adjudication Panel for Wales' website, accessible at the date at which this volume states the law at www.adjudicationpanelwales.org.uk.

12 Local Government Act 2000 s 77(6).

13 For these purposes, any reference to documents includes a reference to information held by means of a computer or in any other electronic form: Local Government Act 2000 s 77(8).

14 Local Government Act 2000 s 77(6)(a).

15 Local Government Act 2000 s 77(6)(b).

16 Local Government Act 2000 s 77(6)(c).

17 Local Government Act 2000 s 77(6)(d).

18 Local Government Act 2000 s 77(6)(e).

19 Local Government Act 2000 s 77(6)(f).

20 Local Government Act 2000 s 77(7). The fine is not to exceed level 3 on the standard scale: s 77(7). As to the standard scale see PARA 105 note 7.

21 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, reg 2, Schedule para 2 (amended by SI 2006/362).

22 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 3.

23 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 4.

24 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 5.

25 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 6.

26 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 7.

27 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 8 (amended by SI 2006/362).

28 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 9.

29 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 10.

30 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 11.

31 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 12.

32 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 13.

33 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule paras 14, 16 (para 16 amended by SI 2006/362).

34 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 15.

35 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 17.

36 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 18.

37 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 19.

38 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 20.

39 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 21.

40 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 22.

41 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 23.

42 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 24.

43 See the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, SI 2001/2288, Schedule para 25.

UPDATE

280 Procedural matters relating to adjudications

TEXT AND NOTE 28--Now refers to the attendance of the Public Services Ombudsman for Wales: SI 2001/2288 Schedule para 9 (substituted by SI 2009/2578).

NOTE 33--SI 2001/2288 Schedule para 16 further amended: SI 2009/2578.

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281. Decisions of interim case tribunals.

An interim case tribunal¹ which adjudicates² on any matters which are the subject of an interim report³ must reach one of the following decisions⁴:

- 534 (1) that the person to whom the recommendation to be suspended⁵ or partially suspended⁶ relates should not be suspended or partially suspended from being a member⁷ or co-opted member⁸ of the relevant authority concerned⁹;
- 535 (2) that that person should be suspended or partially suspended from being a member or co-opted member of the relevant authority concerned for a period which does not exceed six months or, if shorter, the remainder of the person's term of office¹⁰.

If the decision of an interim case tribunal is as mentioned in head (1) the tribunal must give notice of its decision to the standards committee of the relevant authority concerned¹¹. If the decision of an interim case tribunal is as mentioned in head (2) the tribunal must give notice to the standards committee of the relevant authority concerned stating that the person concerned

is to be suspended or partially suspended for the period, and in the way, that the tribunal has decided¹². The effect of such notice is to suspend or partially suspend the person concerned¹³.

A decision of an interim case tribunal does not prevent an ethical standards officer¹⁴ or the Public Services Ombudsman for Wales¹⁵ from continuing with the investigation¹⁶ which gave rise to the interim report concerned and producing a report¹⁷, or a further interim report¹⁸, in respect of any matters which are the subject of the investigation¹⁹.

A copy of any notice under these provisions must be given to any person who is the subject of the notice²⁰ and to the monitoring officer²¹ of the relevant authority concerned²². An interim case tribunal must take reasonable steps to inform any person who made any allegation which gave rise to the investigation²³ of its decision²⁴. A person who is suspended or partially suspended under these provisions may appeal to the High Court against the suspension or partial suspension²⁵, or against the length of the suspension or partial suspension²⁶. Such an appeal may not be brought except with the leave of the High Court²⁷.

1 As to the meaning of 'interim case tribunals' see PARA 279.

2 As to adjudications procedure see PARA 280.

3 As to interim reports see PARAS 256, 274.

4 Local Government Act 2000 s 78(1).

5 As to the meaning of 'suspend' see PARA 256 note 10.

6 See the recommendation mentioned in the Local Government Act 2000 s 65(3) (see PARA 256) or s 72(3) (see PARA 274). The suspension or partial suspension of any person under s 78 must not extend beyond the day on which a notice by virtue of s 78A (see PARA 282) or s 79 (see PARA 283) is given to the standards committee of the relevant authority concerned with respect to that person: s 78(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 197(1), (4)). As to the meaning of 'relevant authority' see PARA 232 note 4. As to the meaning of 'partially suspend' see PARA 256 note 11. As to standards committees see PARA 238.

7 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

8 As to the meaning of 'co-opted member' see PARA 232 note 3.

9 See the Local Government Act 2000 s 78(1)(a). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned, but is a member or co-opted member of another relevant authority the references in s 78(1) to the relevant authority concerned are to be treated as references to that other authority: s 78(8)(a) (s 78(8) substituted, and s 78(8A) added by the Local Government and Public Involvement in Health Act 2007 s 197(1), (5)). The Local Government Act 2000 s 78(8) (as so substituted) does not apply unless: (1) where the relevant authority concerned is in England, the other relevant authority is also in England; or (2) where the relevant authority concerned is in Wales, the other relevant authority is also in Wales: s 78(8A) (as so added).

10 Local Government Act 2000 s 78(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 197(1), (2)). See note 9.

11 Local Government Act 2000 s 78(2) (substituted by the Local Government and Public Involvement in Health Act 2007 s 197(1), (3)). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned, but is a member or co-opted member of another relevant authority the reference in the Local Government Act 2000 s 78(2) to the relevant authority concerned is to be treated as a reference to that other authority: s 78(8)(b) (as substituted: see note 9). Section 78(8) (as so substituted) does not apply unless: (1) where the relevant authority concerned is in England, the other relevant authority is also in England; or (2) where the relevant authority concerned is in Wales, the other relevant authority is also in Wales: s 78(8A) (as so added).

12 Local Government Act 2000 s 78(3) (substituted by the Local Government and Public Involvement in Health Act 2007 s 197(1), (3)). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned, but is a member or co-opted member of another relevant authority the duty under the Local Government Act 2000 s 78(3) to give notice to the standards committee of the relevant authority concerned is to be treated as a duty to give that notice to the standards committee of that other relevant authority, and to give a copy of that notice to the standards committee of the relevant authority concerned: s 78(8)(c) (as substituted: see note 9). Section 78(8) (as so substituted) does not apply unless: (1)

where the relevant authority concerned is in England, the other relevant authority is also in England; or (2) where the relevant authority concerned is in Wales, the other relevant authority is also in Wales: s 78(8A) (as so added).

13 Local Government Act 2000 s 78(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 197(1), (3)).

14 As to the meaning of 'ethical standards officer' see PARA 243.

15 As to the Public Services Ombudsman for Wales see PARA 267 et seq.

16 Ie an investigation under the Local Government Act 2000 s 59 (see PARA 250) or s 69 (see PARA 268).

17 Ie a report under the Local Government Act 2000 s 64 (see PARA 255) or s 71 (see PARA 273).

18 Ie an interim report under the Local Government Act 2000 s 65 (see PARA 256) or s 72 (see PARA 274).

19 Local Government Act 2000 s 78(4), (5) (s 78(5) amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 19).

20 Public Services Ombudsman (Wales) Act 2005 s 78(7)(a).

21 As to monitoring officers see PARA 429.

22 Local Government Act 2000 s 78(7)(b). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned, but is a member or co-opted member of another relevant authority the reference in s 78(7)(b) to the relevant authority concerned is to be treated as a reference to that other authority: s 78(8)(b) (as substituted: see note 9). Section 78(8) (as so substituted) does not apply unless: (1) where the relevant authority concerned is in England, the other relevant authority is also in England; or (2) where the relevant authority concerned is in Wales, the other relevant authority is also in Wales: s 78(8A) (as so added).

23 Ie under the Local Government Act 2000 s 59 (see PARA 250) or s 69 (see PARA 268).

24 Local Government Act 2000 s 78(9).

25 Local Government Act 2000 s 78(10)(a).

26 Local Government Act 2000 s 78(10)(b).

27 Local Government Act 2000 s 78(11) (added by the Local Government and Public Involvement in Health Act 2007 s 197(1), (6)).

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282. Decisions of English case tribunals.

An English case tribunal¹ which adjudicates² on any matter must decide whether or not any person to which that matter relates has failed to comply with the code of conduct³ of the relevant authority⁴ concerned⁵. Where an English case tribunal decides that a person has not failed to comply with the code of conduct of the relevant authority concerned, it must give notice to that effect to the standards committee of the relevant authority concerned⁶.

Where an English case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned, it may⁷:

536 (1) take in respect of him any action authorised by regulations made by the Secretary of State⁸ for these purposes⁹; or

537 (2) decide to take no action against him¹⁰.

Regulations made under head (1) may in particular:

- 538 (a) enable the tribunal to censure the person¹¹;
- 539 (b) enable it to suspend¹², or partially suspend¹³, the person from being a member¹⁴ or co-opted member¹⁵ of the relevant authority concerned for a limited period¹⁶;
- 540 (c) enable it to disqualify the person, for a period not exceeding five years, for being or becoming (whether by election or otherwise) a member of that or any other relevant authority¹⁷.

Regulations made by the Secretary of State may require an English case tribunal to give a notice to the standards committee of the relevant authority concerned where it decides that a person has failed to comply with the code of conduct of that authority and decides to¹⁸: (i) suspend or partially suspend the person¹⁹; (ii) disqualify the person²⁰; (iii) take action against the person other than suspension, partial suspension or disqualification²¹; or (iv) take no action against him²². Such regulations may: (A) prescribe the content of any notice²³; (B) provide for the effect that any notice is to have²⁴; (C) provide for provisions of the regulations to have effect with prescribed modifications where the person concerned is no longer a member or co-opted member of the relevant authority concerned, but is a member or co-opted member of another relevant authority in England²⁵.

A copy of any notice under these provisions²⁶:

- 541 (a) must be given to the Standards Board for England²⁷;
- 542 (b) must be given to any person who is the subject of the decision to which the notice relates²⁸; and
- 543 (c) must be published in one or more newspapers circulating in the area of the relevant authority concerned²⁹.

Where an English case tribunal adjudicates on any matter, it must take reasonable steps to give notice of its decision to any person who made any allegation which gave rise to the adjudication³⁰.

Where a case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned, that person may appeal to the High Court against that decision, or any other decision under these provisions which relates to him³¹.

1 'English case tribunal' means a case tribunal drawn from the Adjudication Panel for England: Local Government Act 2000 s 78A(1) (as added: see note 5). As to adjudication panels see PARA 278. As to the meaning of 'case tribunals' see PARA 279.

2 As to adjudications procedure see PARA 280.

3 As to the duty of members to comply with the relevant authority's code of conduct see PARA 236. As to the code of conduct see PARAS 234-235.

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 Local Government Act 2000 s 78A(2) (ss 78A, 78B added by the Local Government and Public Involvement in Health Act 2007 s 198). See *Scrivens v Ethical Standards Officer* [2005] EWHC 529 (Admin), [2005] LGR 641 (objective test applied to failure to comply with Parish Councils (Model Code of Conduct) Order 2001, SI 2001/3576 (repealed)). A failure on the part of a case tribunal to refer to guidance issued by the president of the adjudications panel will not necessarily mean that there has been an error of principle; it may be assumed that the case tribunal, as a specialist tribunal, would have any guidance in mind even though it may not be specifically referred to in a decision: *Sloam v Standards Board for England* [2005] EWHC 124 (Admin), [2006]

LGR 71. Such an assumption will be justified in those cases where the appellant's conduct, and the tribunal's response by way of penalty, fall clearly within any guidelines. Where, however, there is (to put it at its lowest) scope for debate as to where the member's conduct should be placed on the scale of seriousness, and what the appropriate response should be by way of penalty, a brief explanation of whether, and if so how, the guidelines have been applied will be necessary, if only to ensure that the tribunal's reasoning is adequate: *Sanders v Kingston (No 2)* [2005] EWHC 2132 (Admin), [2006] LGR 111, [2005] 44 LS Gaz R 33.

6 Local Government Act 2000 s 78A(3) (as added: see note 5). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, the reference to the relevant authority concerned is to be treated as including a reference to that other relevant authority: s 78B(2)(a) (as added: see note 5).

7 Local Government Act 2000 s 78A(4) (as added: see note 5). Where a case tribunal makes a decision under s 78A(4) it must give a notice to the standards committee of any relevant authority concerned, and may give a copy of that notice to the standards committee of any other relevant authority of which the respondent has been a member or co-opted member: Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 4(1). The notice must: (1) state that the case tribunal has decided that the respondent has failed to comply with the code of conduct of a relevant authority; (2) specify the details of that failure; (3) specify whether the case tribunal has decided to impose a sanction under reg 3(1) (see note 9), and if so what that sanction is; (4) specify the date from which any sanction is to take effect; and (5) state that the respondent may, by virtue of the Local Government Act 2000 s 78B(4) (see the text and note 31) seek leave to appeal to the High Court against the decision, or any other decision of the case tribunal which relates to the respondent: Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 4(2). Where such a notice specifies any sanction under reg 3(1) (see note 9) the notice has the effect of bringing the sanction into force on the date specified in the notice: reg 4(3). However, the president or deputy president of the adjudication panel may suspend the effect of a notice if requested to do so by a respondent who intends to seek leave to appeal to the High Court: see reg 4(3).

8 As to the Secretary of State see PARA 96.

9 Local Government Act 2000 s 78A(4)(a) (as added: see note 5). A case tribunal may impose any one of, or any combination of, the following sanctions:

- 175 (1) censure of the respondent (Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 3(1)(a));
- 176 (2) restriction for a period not exceeding 12 months of the respondent's access to the premises of, or the respondent's use of the resources of, the relevant authority concerned, or any relevant authority concerned, provided that any such restriction is reasonable and proportionate to the nature of the failure to comply with the authority's code of conduct, and does not unduly restrict the respondent's ability to perform the functions of a member (reg 3(1)(b));
- 177 (3) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months (reg 3(1)(c));
- 178 (4) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months (reg 3(1)(d));
- 179 (5) a requirement that the respondent submit a written apology in a form specified by the case tribunal (reg 3(1)(e));
- 180 (6) a requirement that the respondent undertake such training or participate in such conciliation as the case tribunal specifies (reg 3(1)(f));
- 181 (7) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent submits a written apology in a form specified by the case tribunal (reg 3(1)(g));
- 182 (8) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies (reg 3(1)(h));
- 183 (9) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has submitted a written apology in a form specified by the case tribunal (reg 3(1)(i));

- 184 (10) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies (reg 3(1)(j)); or
- 185 (11) disqualification of the respondent for being, or becoming (whether by election or otherwise) a member of the relevant authority concerned, or any other relevant authority, for a period not exceeding five years (reg 3(1)(k)).

If a case tribunal imposes a sanction under head (3), (4) or (7)-(11), the period for which the respondent is suspended or partially suspended must not exceed the remainder of the respondent's term of office: reg 3(2). If a case tribunal makes a decision under section the Local Government Act 2000 s 78A(4), other than a decision to take no action, in respect of a respondent who has ceased to be a member of any relevant authority at the date on which it makes the decision, it may only impose a sanction under either head (1) or (11): Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 3(3). For these purposes 'respondent' means a person who is the subject of the investigation which gave rise to the reference to the Adjudication Panel for England under the Local Government Act 2000 s 64(3) or 65(4) (see PARA 255-256), or regulations made under s 66 (see PARA 258): Case Tribunals (England) Regulations 2008, SI 2008/2938, reg 2.

10 Local Government Act 2000 s 78A(4)(b) (as added: see note 5).

11 Local Government Act 2000 s 78A(5)(a) (as added: see note 5).

12 As to the meaning of 'suspend' see PARA 256 note 10.

13 As to the meaning of 'partially suspend' see PARA 256 note 11.

14 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.

15 As to the meaning of 'co-opted member' see PARA 232 note 3.

16 Local Government Act 2000 s 78A(5)(b) (as added: see note 5). The reference in s 78A(5)(b) to the relevant authority concerned is to be read, in relation to a person who is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in England, as a reference to that other relevant authority: s 78A(6) (as added: see note 5).

17 Local Government Act 2000 s 78A(5)(c) (as added: see note 5). The tribunal must give adequate reasons for the disqualification: see *Adami v Ethical Standards Officer of the Standards Board for England* [2005] EWCA Civ 1754, [2006] LGR 397. As to the meaning of 'disqualified for being or becoming a member of a relevant authority' see PARA 243 note 4.

18 Local Government Act 2000 s 78A(7) (as added: see note 5).

19 Local Government Act 2000 s 78A(7)(a) (as added: see note 5).

20 Local Government Act 2000 s 78A(7)(b) (as added: see note 5).

21 Local Government Act 2000 s 78A(7)(c) (as added: see note 5).

22 Local Government Act 2000 s 78A(7)(d) (as added: see note 5).

23 Local Government Act 2000 s 78A(8)(a) (as added: see note 5).

24 Local Government Act 2000 s 78A(8)(b) (as added: see note 5).

25 Local Government Act 2000 s 78A(8)(c) (as added: see note 5).

26 Local Government Act 2000 s 78B(1) (as added: see note 5). The reference in the text to notice under these provisions means notice under s 78A(3) (see the text and note 6) or under regulations made under s 78A(7) (see the text and notes 18-22).

27 Local Government Act 2000 s 78B(1)(a) (as added: see note 5). As to the Standards Board for England see PARA 243.

28 Local Government Act 2000 s 78B(1)(b) (as added: see note 5).

29 Local Government Act 2000 s 78B(1)(c) (as added: see note 5). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of

another relevant authority in England, the reference to the relevant authority concerned is to be treated as including a reference to that other relevant authority: s 78B(2)(b) (as added: see note 5).

30 Local Government Act 2000 s 78B(3) (as added: see note 5).

31 Local Government Act 2000 s 78B(4) (as added: see note 5). An appeal may not be brought under s 78B(4) except with the leave of the High Court: s 78B(5) (as added: see note 5). As to appeals to the High Court see CPR Pt 52; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1657 et seq. The appeal court has the power to remit a matter to a case tribunal for want of its being adequately reasoned without quashing the decision or quashing it but remitting for re-consideration and formulation of reasons: *Adami v Ethical Standards Officer of the Standards Board for England* [2005] EWCA Civ 1754, [2006] LGR 397.

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283. Decisions of Welsh case tribunals.

A Welsh case tribunal¹ which adjudicates² on any matter must decide whether or not any person to which that matter relates has failed to comply with the code of conduct³ of the relevant authority⁴ concerned⁵. Where a Welsh case tribunal decides that a person has not failed to comply with the code of conduct of the relevant authority concerned, it must give notice⁶ to that effect to the standards committee of the relevant authority concerned⁷. Where a Welsh case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned, it must decide whether the nature of the failure is such that the person should be⁸:

- 544 (1) suspended⁹ or partially suspended¹⁰ from being a member or co-opted member of the relevant authority concerned¹¹; or
- 545 (2) disqualified for being, or becoming, whether by election¹² or otherwise, a member of that or any other relevant authority¹³.

Where a Welsh case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned but should not be suspended or disqualified, it must give notice¹⁴ to the standards committee of the relevant authority concerned¹⁵ stating that the person has failed to comply with that code of conduct¹⁶ and specifying the details of that failure¹⁷.

A copy of any notice under these provisions:

- 546 (a) must be given to the Public Services Ombudsman for Wales¹⁸;
- 547 (b) must be given to any person who is the subject of the decision to which the notice relates¹⁹; and
- 548 (c) must be published in one or more newspapers circulating in the area of the relevant authority concerned²⁰.

A Welsh case tribunal must take reasonable steps to inform any person who made any allegation which gave rise to the adjudication of the decision of the case tribunal²¹.

Where a Welsh case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned, that person may appeal to the High Court against that decision, or any other decision under these provisions which relates to him²².

1 'Welsh case tribunal' means a case tribunal drawn from the Adjudication Panel for Wales: Local Government Act 2000 s 79(A1) (added by the Local Government and Public Involvement in Health Act 2007 s 199(1), (3)). As to adjudication panels see PARA 278. As to the meaning of 'case tribunals' see PARA 279.

2 As to adjudications procedure see PARA 280.

3 As to the duty of members to comply with the relevant authority's code of conduct see PARA 236. As to the code of conduct see PARAS 234-235.

4 As to the meaning of 'relevant authority' see PARA 232 note 4.

5 Local Government Act 2000 s 79(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)). See *Scrivens v Ethical Standards Officer* [2005] EWHC 529 (Admin), [2005] LGR 641 (objective test applied to failure to comply with Parish Councils (Model Code of Conduct) Order 2001, SI 2001/3576 (repealed)). A failure on the part of a case tribunal to refer to guidance issued by the president of the adjudications panel will not necessarily mean that there has been an error of principle; it may be assumed that the case tribunal, as a specialist tribunal, would have any guidance in mind even though it may not be specifically referred to in a decision: *Sloam v Standards Board for England* [2005] EWHC 124 (Admin), [2006] LGR 71. Such an assumption will be justified in those cases where the appellant's conduct, and the tribunal's response by way of penalty, fall clearly within any guidelines. Where, however, there is (to put it at its lowest) scope for debate as to where the member's conduct should be placed on the scale of seriousness, and what the appropriate response should be by way of penalty, a brief explanation of whether, and if so how, the guidelines have been applied will be necessary, if only to ensure that the tribunal's reasoning is adequate: *Sanders v Kingston (No 2)* [2005] EWHC 2132 (Admin), [2006] LGR 111.

6 Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, a copy of any such notice must also be given to the standards committee of that other relevant authority: Local Government Act 2000 s 79(13)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (8) (a)). As to the meaning of 'member of a relevant authority' see PARA 232 note 2. As to the meaning of 'co-opted member' see PARA 232 note 3. As to standards committees see PARA 238.

7 Local Government Act 2000 s 79(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)).

8 See the Local Government Act 2000 s 79(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)).

9 As to the meaning of 'suspend' see PARA 256 note 10.

10 As to the meaning of 'partially suspend' see PARA 256 note 11.

11 Local Government Act 2000 s 79(4)(a). Where a Welsh case tribunal makes such a decision, it must decide the period for which the person should be suspended or partially suspended, which must not exceed one year or, if shorter, the remainder of the person's term of office: s 79(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)).

Where a Welsh case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned and should be suspended or partially suspended, it must give notice to the standards committee of the relevant authority concerned (Local Government Act 2000 s 78(8) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4))): (1) stating that the person has failed to comply with that code of conduct (Local Government Act 2000 s 79(8)(a)); (2) specifying the details of that failure (s 79(8)(b)); and (3) stating that the person is suspended or partially suspended for the period, and in the way, which the tribunal has decided (s 79(8)(c) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (5))). The effect of a notice given to the standards committee of a relevant authority under the Local Government Act 2000 s 79(8) is to suspend or partially suspend the person concerned as mentioned in subsection (8)(c): s 79(9) (substituted by the Local Government and Public Involvement in Health Act 2007 s 199(1), (6)).

Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the reference in s 79(4)(a) to the relevant authority concerned is treated as a reference to that other relevant authority; and the duty to give notice to the standards committee of the relevant authority concerned under s 79(8) is treated as a duty to give that notice to the standards committee of that other relevant authority, and to give a copy of that notice to the standards committee of the relevant authority concerned: see s 79(13)(b), (c) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (8)(a), (b)).

12 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

13 Local Government Act 2000 s 79(4)(b). Where a Welsh case tribunal makes such a decision, it must decide the period for which the person should be disqualified, which must not exceed five years: s 79(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)). The case tribunal must give adequate reasons for disqualifying a member: see *Adami v Ethical Standards Officer of the Standards Board for England* [2005] EWCA Civ 1754, [2006] LGR 397.

Where a Welsh case tribunal decides that a person has failed to comply with the code of conduct of the relevant authority concerned and should be disqualified, it must give notice to the standards committee of the relevant authority concerned: (1) stating that the person has failed to comply with that code of conduct; (2) specifying the details of that failure; and (3) stating that the person is disqualified for being, or becoming, whether by election or otherwise, a member of that or any other relevant authority for the period which the tribunal has decided: Local Government Act 2000 s 79(10) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)). The effect of a notice given to the standards committee of a relevant authority under s 79(10) is to disqualify the person concerned as mentioned in head (3): Local Government Act 2000 s 79(11). As to the meaning of 'disqualified for being or becoming a member of a relevant authority' see PARA 243 note 4.

Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, a copy of any notice under s 79(10) must also be given to the standards committee of that other relevant authority: s 79(13)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (8)(a)).

14 Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in the same country, that is to say England or Wales, a copy of any such notice must also be given to the standards committee of that other relevant authority: Local Government Act 2000 s 79(13)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (8)(a)).

15 Local Government Act 2000 s 79(7) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)).

16 Local Government Act 2000 s 79(7)(a).

17 Local Government Act 2000 s 79(7)(b).

18 Local Government Act 2000 s 79(12)(a) (substituted by the Local Government and Public Involvement in Health Act 2007 s 199(1), (7)). As to the Public Services Ombudsman for Wales see PARA 267 et seq.

19 Local Government Act 2000 s 79(12)(b).

20 Local Government Act 2000 s 79(12)(c). Where the person concerned is no longer a member or co-opted member of the relevant authority concerned but is a member or co-opted member of another relevant authority in Wales, the reference in the text to the relevant authority concerned is treated as including a reference to that other relevant authority: s 79(13)(d) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (8)(a)).

21 Local Government Act 2000 s 79(14) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)).

22 Local Government Act 2000 s 79(15) (amended by the Local Government and Public Involvement in Health Act 2007 s 199(1), (4)). An appeal under the Local Government Act 2000 s 79(15) may not be brought except with the leave of the High Court: Local Government Act 2000 s 79(16) (added by the Local Government and Public Involvement in Health Act 2007 s 199(1), (9)). As to appeals to the High Court see CPR Pt 52; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1657 et seq. The appeal court has the power to remit a matter to a case tribunal for want of its being adequately reasoned without quashing the decision or quashing it but remitting for re-consideration and formulation of reasons: *Adami v Ethical Standards Officer of the Standards Board for England* [2005] EWCA Civ 1754, [2006] LGR 397.

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284. Recommendations by case tribunals.

A case tribunal¹ which has adjudicated² on any matter may make recommendations to a relevant authority³ about any matters relating to: (1) the exercise of the authority's functions⁴; (2) the authority's code of conduct⁵; or (3) the authority's standards committee⁶. A relevant authority to whom recommendations are made⁷ must consider the recommendations and, within a period of three months beginning with the day on which the recommendations are received, prepare a report for the relevant person giving details of what action the authority has taken or is proposing to take as a result of the recommendations⁸. A relevant authority's function of considering such a report may be discharged only by the authority or by the standards committee of that authority⁹.

If the relevant person is not satisfied with the action the relevant authority has taken or proposes to take in relation to the recommendations, that person may require the authority to publish a statement giving details of the recommendations made by the tribunal and of the authority's reasons for not fully implementing the recommendations¹⁰.

1 As to the meaning of 'case tribunals' see PARA 279.

2 As to adjudications procedure see PARA 280.

3 As to the meaning of 'relevant authority' see PARA 232 note 4.

4 Local Government Act 2000 s 80(1)(a). A case tribunal must send a copy of any recommendations it makes under s 80(1) to the relevant person: s 80(2). For these purposes, 'relevant person' means: (1) the Standards Board for England where the relevant Authority concerned is in England; (2) the Public Services Ombudsman for Wales where the relevant authority concerned is in Wales: s 80(6) (amended by the Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4 paras 1, 21). As to the Standards Board for England see PARA 243 et seq. As to the Public Services Ombudsman for Wales see PARAS 267 et seq.

5 Local Government Act 2000 s 80(1)(b). As to the code of conduct see PARAS 234-235.

6 Local Government Act 2000 s 80(1)(c). As to standards committees see PARA 238.

7 Ie under the Local Government Act 2000 s 80(1): see the text and notes 1-6.

8 Local Government Act 2000 s 80(3).

9 Local Government Act 2000 s 80(4). Accordingly, the consideration of such a report is not a function which may be delegated under the Local Government Act 1972 to a relevant authority to which s 101 (arrangements for the discharge of functions by local authorities) (see PARA 370 et seq) applies: Local Government Act 2000 s 80(4). As to the meaning of 'relevant authority' see PARA 232 note 4.

10 Local Government Act 2000 s 80(5).

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(iv) Pecuniary Interests

A. IN GENERAL

285. Disapplication.

Where a relevant authority¹ has adopted a code of conduct² or such a code applies to it, the provisions restricting a member's³ participation in decision-making because of pecuniary interests⁴ are disapplied⁵.

1 A relevant authority means:

- 186 (1) a police authority in England or Wales (Police Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 1(2)(a));
- 187 (2) the following authorities in England: (a) a county council; (b) a district council; (c) a London borough council; (d) a parish council; (e) the Greater London Authority; (f) the Metropolitan Police Authority; (g) the London Fire and Emergency Planning Authority; (h) the Common Council of the City of London; (i) the Council of the Isles of Scilly; (j) a fire and rescue authority; (k) a joint authority; (l) the Broads Authority; and (m) a national park authority (art 1(2)(B));
- 188 (3) a relevant Welsh authority which is a county, county borough or community council or fire and rescue authority (Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, art 4(1)).

As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to fire and rescue authorities see **FIRE SERVICES**. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq. As to joint authorities see PARA 47 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 As to the adoption of a code of conduct see PARA 234 et seq.

3 As to members of a local authority see PARA 117 et seq.

4 I.e. the Local Government Act 1972 ss 94-98, 105 (see PARA 286 et seq) and any regulations made or code issued under the Local Government and Housing Act 1989 s 19 (see PARA 290). Note that all of these provisions are also prospectively repealed: see PARA 286 et seq.

5 See the Police Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 3; and the Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008/788, art 4.

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286. Restrictions on voting on account of pecuniary interests.

Until a day to be appointed the following provisions have effect¹. If a member of a local authority² has any pecuniary interest³, whether direct or indirect, in any contract, proposed contract or other matter⁴ and is present at a meeting⁵ of the local authority at which the contract or matter is the subject of consideration, he must disclose⁶ the fact at the meeting as soon as practicable after its commencement and must not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it⁷. If any person fails to comply with these requirements he will for each offence be liable on summary conviction to a fine⁸ unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting⁹.

The provisions as to the declaration of interests do not apply to an interest in a contract, proposed contract or other matter which a member of a local authority has as a person who is liable to pay an amount in respect of any community charge or in respect of council tax¹⁰, or who would be so liable but for any enactment or anything provided or done under any

enactment or as a ratepayer or inhabitant of the area or as an ordinary consumer of water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public¹¹.

A decision taken by an authority in which a member disabled by interest has taken part is valid, except where the authority is acting judicially¹².

1 As from a day to be appointed the provisions of the Local Government Act 1972 ss 94-98, 105 are repealed by the Local Government Act 2000 s 107, Sch 5 paras 12, 13, Sch 6. At the date at which this volume states the law no such day had been appointed. The Local Government Act 1972 ss 94-98 are also disapplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

2 For the purposes of the Local Government Act 1972 ss 94, 97, 'local authority' includes a joint authority, a joint waste authority, the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority: Local Government Act 1972 s 98(1A) (as added by the Local Government Act 1985 s 84, Sch 14 para 13; and amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 7; the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 2(a); the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 25, Sch 29 Pt I para 15; the Criminal Justice and Police Act 2001 Sch 6 para 24(a), Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 paras 1, 7). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155.

3 As to pecuniary interests see PARA 288.

4 The contract may be constituted by advertisement, tender and acceptance (*Re Gloucester Municipal Election Petition 1900*, *Ford v Newth* [1901] 1 KB 683, DC), but it must be one entered into for profit, where interest and duty are likely to conflict (*Holden v Southwark Corpn* [1921] 1 Ch 550, decided under the Local Government Act 1894 s 46(1)(e) (repealed)). A contract purporting to be made by an agent against the principal's express instructions will not disqualify the principal: *Miles v McIlwraith* (1883) 8 App Cas 120, PC.

The legal requirements of contracting are unlikely to decide the matter, as the words 'or other matter' must be read in a general way without limitation: *Rands v Oldroyd* [1959] 1 QB 204 at 212-213, [1958] 3 All ER 344 at 348, DC, per Lord Parker CJ.

5 The provisions of the Local Government Act 1972 ss 94-98 apply as respects members of a committee of a local authority or of a joint committee of two or more local authorities, including, in either case, a sub-committee, whether the committee or joint committee is appointed or established under Pt V (ss 79-100) or under any other enactment, as they apply in respect of members of local authorities, subject to the following modifications: (1) references to meetings of any such committee are substituted for references to meetings of the local authority; and (2) in the case of members of a committee of a local authority or any sub-committee, the right of persons who are members of the committee or sub-committee but not members of the local authority to inspect the book kept under s 96(2) (see PARA 289) is limited to an inspection of the entries in the book relating to the members of the committee or sub-committee: s 105 (prospectively repealed: see note 1). As to committees and sub-committees see PARA 371 et seq. As to joint committees see PARA 380.

A local authority may by standing order provide for the exclusion of a member from a meeting of the authority while any contract, proposed contract or other matter in which he has a direct or indirect pecuniary interest is under discussion: Local Government Act 1972 s 94(4) (prospectively repealed: see note 1). As to standing orders see PARA 620.

A local authority may also set criteria as to the declaration of pecuniary interests, and, subject to there being no irrationality, it may exclude from a committee a person who does not satisfy those criteria: *R v Newham London Borough Council, ex p Haggerty* (1986) 85 LGR 48, (1986) Times, 11 April.

6 Ie subject to the provisions of the Local Government Act 1972 s 95: see PARA 288.

7 Local Government Act 1972 s 94(1) (prospectively repealed: see note 1). See *Nutton v Wilson* (1889) 22 QBD 744, CA. As to the disclosure of pecuniary interests see PARA 289. As to the removal or exclusion of disabilities see PARA 292.

8 Ie a fine not exceeding level 4 on the standard scale: Local Government Act 1972 s 94(2) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7.

9 Local Government Act 1972 s 94(2) (prospectively repealed: see note 1). A prosecution for an offence under s 94(2) may only be instituted by the Director of Public Prosecutions: s 94(3) (prospectively repealed: see note 1).

10 As to council tax see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq.

11 Local Government Act 1972 s 97(4) (amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 32; and SI 1990/10; and prospectively repealed (see note 1)). The provision of housing is not a service within the meaning of this exclusion: *Brown v DPP* [1956] 2 QB 369, [1956] 2 All ER 189.

12 See *R v Hendon RDC, ex p Chorley* [1933] 2 KB 696, 31 LGR 332, DC; *Hannam v Bradford City Council* [1970] 2 All ER 690, [1970] 1 WLR 937, CA. See also *R v LCC, ex p Akkersdyk, ex p Fermenia* [1892] 1 QB 190, DC. See further **JUDICIAL REVIEW** vol 61 (2010) PARA 617 et seq.

UPDATE

286 Restrictions on voting on account of pecuniary interests

NOTE 2--Local Government Act 1972 s 98(1A) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 16.

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287. Restrictions on voting under executive arrangements.

Where a local authority¹ is operating executive arrangements², the statutory provisions relating to restrictions on voting³ apply as respects members of the authority's executive, or of a committee of its executive, who are discharging functions of the local authority which are the responsibility of that executive⁴ or, as the case may be, that committee, as they apply in respect of members of local authorities⁵.

1 As to the meaning of 'local authority' see PARA 23.

2 As to executive arrangements see PARA 303 et seq.

3 Ie the Local Government Act 1972 ss 94-98.

4 As to the discharge of functions under executive arrangements see PARA 357 et seq.

5 Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, art 7(1). In such cases, references to meetings of any such executive or, as the case may be, any such committee are to be substituted for references to meetings of the local authority: art 7(2). Article 7 will cease to have effect in relation to an authority when the Local Government Act 1972 ss 94-98 cease to have effect: see the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, art 7(3).

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288. Pecuniary interests.

Until a day to be appointed the following provisions have effect¹. A pecuniary interest of a member of a local authority² in a contract, proposed contract or other matter may be direct or indirect³. The interest must be pecuniary or at least material, but it does not need to be a pecuniary advantage⁴.

A person is treated⁵ as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

- 549 (1) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration⁶; or
- 550 (2) he is a partner or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration⁷.

These provisions do not apply to membership of or employment under any public body⁸, and a member of a company or other body will not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities⁹ of that company or other body¹⁰.

A member is not treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of an interest of his or of any company, body or person with which he is connected¹¹ which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of, or in voting on, any question with respect to that contract or matter¹².

Where a member of a local authority has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed a specified amount¹³, or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one hundredth of the total issued share capital of that class, the provisions relating to pecuniary interests¹⁴ do not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest¹⁵.

The following are not treated as pecuniary interests: (a) the receipt by the chairman, vice-chairman or deputy chairman of a principal council¹⁶ of an allowance to meet the expenses of his office or his right to receive, or the possibility of his receiving, such an allowance¹⁷; (b) the receipt by a member of a local authority of an allowance or other payment¹⁸ or his right to receive, or the possibility of his receiving, any such payment¹⁹.

1 As from a day to be appointed the provisions of the Local Government Act 1972 ss 94-98, 105 are repealed by the Local Government Act 2000 s 107, Sch 5 paras 12, 13, Sch 6. At the date at which this volume states the law no such day had been appointed. The Local Government Act 1972 ss 94-98 are also disapplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

2 As to the meaning of 'local authority' for these purposes see PARA 286 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to the application of the Local Government Act 1972 ss 94-98 to committees, sub-committees and joint committees see PARA 286 note 5. As to committees and sub-committees generally see PARA 371 et seq. As to joint committees generally see PARA 380.

3 See the Local Government Act 1972 s 94(1); and PARA 286. In the case of married persons or civil partners living together, the interest of one spouse or civil partner is, if known to the other, deemed to be also an interest of the other: s 95(3), (4) (prospectively repealed: see note 1); and s 95(4) added by the Civil Partnership Act 2004 s 261(1), Sch 27 para 38). As to restrictions on voting on account of pecuniary interests see PARA 286. As to pecuniary interests see also the National Code of Local Government Conduct (Joint Circular

of the Department of the Environment 8/90 and the Welsh Office 23/90). As to pecuniary interests of bodies see *R v Kirklees Metropolitan Borough Council, ex p Beaumont* [2001] LGR 187, (2000) Times, 22 November.

A member's beneficial interest may be a direct interest where the contracting party is a trustee (*Simpson v Ready* (1884) 12 M & W 736), a guarantor of a contract (*R v Franklin* (1870) IR 6 CL 239), or an assignee of a contract (*Hunnings v Williamson* (1883) 11 QBD 533, CA).

4 See *England v Inglis* [1920] 2 KB 636, DC. A lease granted by a council to a person who was the trustee of a councillor has been held sufficient to disqualify: *Simpson v Ready* (1844) 12 M & W 736. See also *Brown v DPP* [1956] 2 QB 369, [1956] 2 All ER 189; *Whiteley v Barley* (1888) 21 QBD 154, CA; *Barnacle v Clark* [1900] 1 QB 279; *Cox v Truscott* (1905) 69 JP 174; *Tomkins v Jolliffe* (1887) 51 JP Jo 247; *Nutton v Wilson* (1889) 22 QBD 744, CA.

5 le subject to the provisions of the Local Government Act 1972 ss 95, 97.

6 Local Government Act 1972 s 95(1)(a) (prospectively repealed: see note 1).

7 Local Government Act 1972 s 95(1)(b) (prospectively repealed: see note 1).

8 For the purposes of the Local Government Act 1972 s 95, 'public body' includes any body established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, the governing body of any university, university college or college, school or hall of a university and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq); Local Government Act 1972 s 98(2) (prospectively repealed: see note 1).

9 For the purposes of the Local Government Act 1972 ss 95, 97 'securities' means (1) any of the following kinds of investments: (a) shares; (b) instruments creating or acknowledging indebtedness; (c) government and public securities; (d) instruments giving entitlement to investments; (e) certificates representing securities; (f) units in a collective investment scheme; (g) rights to, or interests in, any security of a kind mentioned in heads (a)-(f) above; (2) instruments creating or acknowledging indebtedness; (3) instruments giving entitlements to investments; (4) certificates representing securities; (5) units in a collective investment scheme; (6) rights to, or interests in, any security of the kind mentioned in heads (1)-(5) above; (7) rights (whether actual or contingent) to money lent to, or deposited with (a) a society registered under the Industrial and Provident Societies Act 1965 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARAS 2397, 2402 et seq); or (b) a building society within the meaning of the Building Societies Act 1986 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1906): see the Local Government Act 1972 s 98(1) (substituted by SI 2001/3649; and amended by SI 2002/1555). The definition of securities must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22 and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 84-85); Local Government Act 1972 s 98(1), (3) (both as prospectively repealed (see note 1); s 98(1) as so substituted and amended; s 98(3) added by SI 2002/1555).

10 Local Government Act 1972 s 95(2) (prospectively repealed: see note 1).

11 le as mentioned in the Local Government Act 1972 s 95(1): see the text and notes 5-7.

12 Local Government Act 1972 s 97(5) (prospectively repealed: see note 1).

13 The amount is currently specified as £5,000: Local Government Act 1972 s 97(6) (amended by the Local Government and Housing Act 1989 s 194, Sch 11 para 23; and prospectively repealed (see note 1)).

14 le the provisions of the Local Government Act 1972 s 94: see PARA 286.

15 Local Government Act 1972 s 97(6) (prospectively repealed: see note 1). As to the disclosure of pecuniary interests see PARA 289.

16 For the purposes of the Local Government Act 1972 s 94(5)(a), 'principal council' includes any authority listed in s 98(1A) (see PARA 286 note 2): s 98(1A) (as added by the Local Government Act 1985 s 84, Sch 14 para 13; and amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 7; the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 2(a); the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 25, Sch 29 Pt I para 15; the Criminal Justice and Police Act 2001 Sch 6 para 24(a), Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 paras 1, 7). As to the meaning of 'principal council' generally see PARA 23.

17 Local Government Act 1972 s 94(5)(a) (prospectively repealed: see note 1).

18 le under any provision of the Local Government Act 1972 ss 173-176 (see PARAS 171-176) or the Police Act 1996 s 4, Sch 2 para 25 (see **POLICE** vol 36(1) (2007 Reissue) PARA 140) or under any scheme made by virtue of the Local Government and Housing Act 1989 s 18 (see PARA 166 et seq).

19 Local Government Act 1972 s 94(5)(b) (amended by the Police Act 1996 s 103, Sch 7 para 21; the Police Act 1997 s 88, Sch 6 para 1; the Local Government and Housing Act 1989 s 194, Sch 11 para 22; and the Criminal Justice and Police Act 2001 ss 128(1), 137, Sch 6 paras 22, 23, Sch 7 Pt 5(1); and prospectively repealed (see note 1)). The Local Government Act 1972 s 94(5) applies in relation to a member of any body mentioned in s 177(1) (see PARA 174 note 1) to whom it would not otherwise apply as it applies in relation to a member of a local authority, and no other enactment or instrument prevents a member of any such body from taking part in the consideration or determination of any allowance or other payment under any of the provisions of ss 173-176 (see PARAS 171-176) or under any scheme made by virtue of the Local Government and Housing Act 1989 s 18 (see PARA 166 et seq): Local Government Act 1972 s 177(4) (amended by the Local Government and Housing Act 1989 Sch 11 para 28(4)).

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289. Disclosure of pecuniary interests.

Until a day to be appointed the following provisions have effect¹. The duty to disclose a pecuniary interest² in a contract, proposed contract or other matter under consideration arises as soon as practicable after the commencement of the meeting³.

A general notice given in writing to the proper officer⁴ of the authority by a member to the effect that he or his spouse or civil partner is a member or in the employment of a specified company or other body, or that he or his spouse or civil partner is a partner or in the employment of a specified person, or that he or his spouse or civil partner is the tenant of any premises owned by the authority, will, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person or to those premises which may be the subject of consideration after the date of the notice⁵.

The proper officer of the authority must record in a book kept for the purpose particulars of any disclosure⁶ and of any notice⁷, and the book must be open at all reasonable hours to the inspection of any member of the local authority⁸.

1 As from a day to be appointed the provisions of the Local Government Act 1972 ss 94-98, 105 are repealed by the Local Government Act 2000 s 107, Sch 5 paras 12, 13, Sch 6. At the date at which this volume states the law no such day had been appointed. The Local Government Act 1972 ss 94-98 are also disapplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

2 As to pecuniary interests see PARA 288. As to restrictions on voting on account of pecuniary interests see PARA 286.

3 See the Local Government Act 1972 s 94(1); and PARA 286. As to the application of the Local Government Act 1972 ss 94-98 to committees, sub-committees and joint committees see PARA 286 note 5. As to committees and sub-committees generally see PARA 371 et seq. As to joint committees generally see PARA 380.

As to disclosure of interests under the Local Government Act 2000 see PARA 237.

4 As to proper officers see PARA 431.

5 Local Government Act 1972 s 96(1) (amended by the Civil Partnership Act 2004 Sch 27 para 39; and prospectively repealed (see note 1)).

6 Ie any disclosure made under the Local Government Act 1972 s 94: see the text and note 3; and PARA 286.

7 Ie any notice given under the Local Government Act 1972 s 96.

8 Local Government Act 1972 s 96(2) (prospectively repealed: see note 1).

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290. Power to require notice of members' interests.

Until a day to be appointed the following provisions have effect¹. The Secretary of State or the Welsh Ministers² may by regulations³ require each member of a local authority⁴:

- 551 (1) to give a general notice to the proper officer⁵ of the authority setting out such information about the member's direct and indirect pecuniary interests⁶ as may be prescribed by regulations, or stating that he has no such interests⁷; and
- 552 (2) from time to time to give to the proper officer such further notices as may be prescribed for the purpose of enabling the proper officer to keep the information provided under the regulations up to date⁸.

Any member of a local authority who without reasonable excuse⁹ fails to comply with the requirements of the regulations¹⁰, or in giving a notice¹¹ in compliance with a requirement provides information which he knows to be false or misleading in a material particular, or recklessly¹² provides information which is false or misleading in a material particular¹³, is guilty of an offence¹⁴.

1 As from a day to be appointed the Local Government and Housing Act 1989 s 19 is repealed by the Local Government Act 2000 s 107, Sch 5 para 25, Sch 6. At the date at which this volume states the law no such day had been appointed. Any regulation made or code issued under the Local Government and Housing Act 1989 s 19 is also disappplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

2 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 Regulations under the Local Government and Housing Act 1989 s 19 (see the text and notes 4-14) may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate: s 19(6) (prospectively repealed: see note 1). As to the regulations made see the Local Authorities (Members' Interests) Regulations 1992, SI 1992/618; and PARA 291.

As to disclosure of interests under the Local Government Act 2000 see PARA 237.

4 As to the meaning of 'local authority' see PARA 23.

5 As to proper officers see PARA 431; definition applied by the Local Government and Housing Act 1989 s 21(3).

6 References in the Local Government and Housing Act 1989 s 19 to the indirect pecuniary interests of a member of a local authority include references to any such interests as, by virtue of any connection between that member or his spouse or civil partner and any other person, would fall to be disclosed under the Local Government Act 1972 s 94 (see PARA 286), if the authority were proposing to enter into a contract with that other person: Local Government and Housing Act 1989 s 19(7) (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 133; and prospectively repealed (see note 1)). As to pecuniary interests generally see PARA 288. As to the disclosure of pecuniary interests see also PARA 289. As to restrictions on voting on account of pecuniary interests see PARA 286.

7 Local Government and Housing Act 1989 s 19(1)(a) (prospectively repealed: see note 1). A local authority is not entitled, whether by means of making it a condition of any appointment or by any other means whatever, to impose any obligations on its members to disclose any interests other than those that they are required to disclose by virtue of the Local Government Act 1972 s 94 (see PARA 286) or any regulations under the Local Government and Housing Act 1989 s 19: s 19(5) (prospectively repealed: see note 1).

8 Local Government Act 1972 s 19(1)(b) (prospectively repealed: see note 1).

9 As to reasonable excuse see eg *Leck v Epsom RDC* [1922] 1 KB 383 (public heath); *Aldridge v Warwickshire Coal Co Ltd* (1925) 133 LT 439 (workers' compensation); *R v Philip Reid* [1973] 3 All ER 1020, [1973] 1 WLR 1283, CA (driving with blood alcohol above the prescribed limit).

10 Local Government and Housing Act 1989 s 19(2)(a) (prospectively repealed: see note 1).

11 The Local Government Act 1972 s 96 (see PARA 289) does not apply in relation to any notice given in pursuance of any regulations under the Local Government and Housing Act 1989 s 19, but such regulations may provide: (1) that the giving of a notice in pursuance of any such regulations is deemed to be sufficient disclosure for the purposes of the Local Government Act 1972 s 94 (see PARA 286); and (2) that the proper officer of a local authority is to maintain such records of the information contained in notices given to him as may be prescribed by the regulations and is to keep those records open to inspection by members of the public: Local Government and Housing Act 1989 s 19(4) (prospectively repealed: see note 1).

12 As to recklessness see eg *R v Lawrence* [1982] AC 510, [1981] 1 All ER 974 (reckless driving); *Metropolitan Police Comr v Caldwell* [1982] AC 341, sub nom *R v Caldwell* [1981] 1 All ER 961, HL (damage to property).

13 Local Government and Housing Act 1989 s 19(2)(b) (prospectively repealed: see note 1).

14 Local Government and Housing Act 1989 s 19(2) (prospectively repealed: see note 1). Proceedings for an offence under s 19(2) may not be instituted except by or with the consent of the Director of Public Prosecutions: s 19(3) (prospectively repealed: see note 1). A person guilty of an offence under s 19(2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 19(2) (prospectively repealed: see note 1). As to the standard scale see PARA 105 note 7.

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291. Notices of members' interests.

Each relevant member¹ must give the proper officer² of the authority of which he is a member a general notice³: (1) stating his name⁴; and (2) setting out, for each matter listed⁵ in respect of which he has a direct or indirect pecuniary interest⁶, the information prescribed⁷; and (3) stating, for each other matter listed, that he does not have such an interest⁸. Each relevant member must, within one month of any change to the information contained in a notice given by him, give to the proper officer of the authority of which he is a member a further notice setting out the details of that change⁹.

The proper officer of an authority must maintain records of the information contained in the notices given to him¹⁰. However, this applies to information given by a relevant member only for so long as he continues to be a member of the authority in question¹¹. The records consist of: (a) the date on which the proper officer received the notice¹²; (b) the name of the relevant member who gave the notice¹³; and (c) the notice or a copy of it or a statement of the information contained in the notice¹⁴. The proper officer must keep the records open to inspection by members of the public without charge at all reasonable hours¹⁵.

The pecuniary interests on which the relevant member must provide information are: (i) employment, office, trade, profession or vocation¹⁶; (ii) sponsorship¹⁷; (iii) contracts¹⁸; (iv) land¹⁹; (v) licences²⁰; (vi) corporate tenancies²¹; (vii) interests in securities²².

1 'Relevant member' means: (1) in the case of a police authority, a member of the authority appointed under the Police Act 1996 s 4, Sch 2 para 2 or Sch 2 para 5 (see **POLICE** vol 36(1) (2007 Reissue) PARA 140); (2) in the case of a national park authority, any member of the authority; (3) in the case of the Service Authority for the National Crime Squad, any member of the authority; and (4) in any other case, an elected member of the authority: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 2 (definition added by SI 1996/1215; and amended by SI 1998/1003); Interpretation Act 1978 s 17(2). As to national park authorities see

OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq. As to the Service Authority for the National Crime Squad see **POLICE** vol 36(1) (2007 Reissue) PARA 430 et seq.

For these purposes, 'authority' means: (a) in relation to England, a county, district or London borough council, the Council of the Isles of Scilly, the Common Council of the City of London in its capacity as a local authority, police authority or port health authority; (b) in relation to Wales, a county or county borough council; (c) in relation to England and Wales, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), or a national park authority or the Service Authority for the National Crime Squad: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 2 (definition substituted by SI 1996/1215; and amended by SI 1998/1003); the Interpretation Act 1978 s 17(2). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36.

2 As to proper officers see PARA 431.

3 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(1) (amended by SI 1996/1215). These regulations are made under the Local Government and Housing Act 1989 s 19 (prospectively repealed): see PARA 290. As to disclosure of interests under the Local Government Act 2000 see PARA 237. The Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, are disapplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

A person who was a relevant member of a police authority or a national park authority immediately before 1 July 1996 had to give a general notice not later than one month after the date, being a date on or after that date, on which he first attended a relevant meeting: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(2) (substituted by SI 1996/1215). A person who was a relevant member of the Service Authority for the National Crime Squad immediately before 1 May 1998 had to give a general notice not later than one month after the date, being a date on or after that date, on which he first attended a relevant meeting: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(2A) (added by SI 1998/1003).

A person who becomes a relevant member of an authority other than a police authority or a national park authority and is not already a member of that authority immediately before the date of his election must give a general notice not later than one month after: (1) if he is a member of the Common Council of the City of London, the date on which he first attended a relevant meeting after his election; and (2) in any other case, the date on which he made a declaration under the Local Government Act 1972 s 83(1) (see PARA 143): Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(3) (amended by SI 1996/1215).

A person who became a relevant member of a police authority or a national park authority (other than by a re-appointment taking effect immediately after cessation of his membership) on or after 1 July 1996 had to give the relevant notice not later than one month after that date, or one month after the date on which he first attended a relevant meeting, whichever was the later: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(3A) (added by SI 1996/1215). A person who became a relevant member of the Service Authority for the National Crime Squad (other than by a re-appointment taking effect immediately after cessation of his membership) on or after 1 May 1998, had to give the relevant notice not later than one month after that date, or one month after the date on which he first attended a relevant meeting, whichever was the later: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(3B) (added by SI 1998/1003).

In relation to a relevant member, 'relevant meeting' means a meeting of the authority of which he is a member, or, except where the authority is a police authority, a meeting of any of the following of which he is a member: (a) a committee or sub-committee of the authority; or (b) a joint committee, joint board or other body for the time being discharging any of the functions of the authority or appointed to advise the authority on a matter relating to the discharge of its functions: Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(4) (amended by SI 1996/1215). As to committees and sub-committees see PARA 371 et seq. As to joint committees see PARA 380. As to joint boards see PARA 10.

4 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(1)(a).

5 He is listed in the Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule: see the text and notes 16-22.

6 As to pecuniary interests see PARA 288. As to restrictions on voting on account of pecuniary interests see PARA 286. As to the disclosure of pecuniary interests see PARA 289.

7 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(1)(b).

8 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 3(1)(c).

9 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 4 (amended by SI 1996/1215).

10 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 5(1).

11 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 5(3) (amended by SI 1996/1215).

12 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 5(2)(a).

13 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 5(2)(b) (amended by SI 1996/1215).

14 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 5(2)(c).

15 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 6.

16 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule paras 1, 2. The member must provide a description of any employment, office, trade, profession or vocation carried on by him for profit or gain: Schedule para 1 (amended by SI 1996/1215). The member must also provide the name of the person who employs him or, as the case may be, appointed him to the office, or the name of any firm in which he is a partner: Schedule para 2.

17 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 3. The member must provide the name of any person (other than a local authority) who has, not earlier than one year before the date the member gives the relevant notice, made a payment to him in respect of any expenses incurred by him in carrying out his duties as a member or in respect of his election as a member: Schedule para 3. The provisions relating to giving notice of a payment in respect of election do not apply to a police authority, the Service Authority for the National Crime Squad and a national park authority: see reg 3(5) (added by SI 1996/1215; and amended by SI 1998/1003). As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq; and as to the Service Authority for the National Crime Squad see **POLICE** vol 36(1) (2007 Reissue) PARA 430 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

18 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 4 (amended by SI 1996/1215). The member must provide a description of any contract of which he is aware, including its duration, but excluding the consideration: (1) which is made between him, or a firm in which he is a partner, or a body corporate of which he is a director or in the securities of which he has a beneficial interest, and the authority of which he is a member; (2) under which goods or services are to be provided or works are to be executed; and (3) which has not been fully discharged: Schedule para 4 (as so amended). 'Director' includes a member of the committee of management of an industrial and provident society: reg 2. As to industrial and provident societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq.

19 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 5 (amended by SI 1996/1215). The member must provide the address or other description of any land sufficient to identify the land in which he has a beneficial interest and which is in the area of the authority of which he is a member: Schedule para 5 (as so amended). 'Land' excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the councillor, alone or jointly with others, to occupy the land or to receive income: reg 2.

20 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 6 (amended by SI 1996/1215). The member must provide the address or other description of land sufficient to identify the land which he has a licence, alone or jointly with others, to occupy for a month or longer and which is in the area of the authority of which he is a member: Schedule para 6 (as so amended).

21 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 7 (amended by SI 1996/1215). The member must provide the address or other description of land sufficient to identify the land held under a tenancy where to his knowledge: (1) the landlord is the authority of which he is a member; and (2) the tenant is a body corporate of which he is a director or in the securities of which he has a beneficial interest or is a firm in which he is a partner: Schedule para 7 (as so amended).

22 Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, Schedule para 8 (amended by SI 1996/1215). The member must provide the name of any body corporate where: (1) that body, to his knowledge, has a place of business or land in the area of the authority of which he is a member; and (2) he has a beneficial interest in the securities of that body where the total nominal value of the securities in which he has a beneficial interest exceeds £25,000 or one hundredth of the total issued share capital of that body, or, if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which he has a beneficial interest exceeds one hundredth of the total issued share capital of that class: Schedule para 8 (as so amended).

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292. Removal of disabilities.

Until a day to be appointed the following provisions have effect¹. The district council, as respects a member of a parish council, the principal council, as respects a member of a community council², and the Secretary of State or the Welsh Ministers³, as respects a member of any other local authority⁴, may, subject to such conditions as the council or the Secretary of State or the Ministers think fit to impose, remove any disability on account of pecuniary interests⁵ in any case in which the number of members of the local authority disabled on account of pecuniary interests at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the council, the Secretary of State or the Welsh Ministers in the interests of the inhabitants of the area that the disability should be removed⁶.

The power of a council and of the Secretary of State or the Welsh Ministers to remove disabilities on account of pecuniary interests includes power to remove, either indefinitely or for any period, any such disability which would otherwise attach to any member (or, in the case of the power of the Secretary of State or the Welsh Ministers, any member or any class or description of member) by reason of such interests and in respect of such matters as may be specified by the council or the Secretary of State or the Welsh Ministers⁷.

Nothing in the restrictions on voting on account of pecuniary interests⁸ precludes any person from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to a council or to the Secretary of State or the Welsh Ministers for the removal or exclusion of a disability⁹.

1 As from a day to be appointed the provisions of the Local Government Act 1972 ss 94-98, 105 are repealed by the Local Government Act 2000 s 107, Sch 5 paras 12, 13, Sch 6. At the date at which this volume states the law no such day had been appointed. The Local Government Act 1972 ss 94-98 are also disapplied as regards a relevant authority which has adopted a code of conduct: see PARA 285.

2 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 As to the meaning of 'local authority' for these purposes see PARA 286 note 2; and as to the meaning of 'local authority' generally see PARA 23.

As to the application of the Local Government Act 1972 ss 94-98 to committees, sub-committees and joint committees see PARA 286 note 5. As to committees and sub-committees generally see PARA 371 et seq. As to joint committees generally see PARA 380. As to disclosure of interests under the Local Government Act 2000 see PARA 237.

5 Ie any disability on account of a pecuniary interest imposed by the Local Government Act 1972 s 94: see PARA 286. As to pecuniary interests see PARA 288. As to the disclosure of pecuniary interests see PARA 289. As to restrictions on voting on account of pecuniary interests see PARA 286.

6 Local Government Act 1972 s 97(1) (amended by the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 para 25(a), Sch 18; and prospectively repealed (see note 1)).

7 Local Government Act 1972 s 97(2) (amended by the Local Government (Wales) Act 1994 Sch 15 para 25(b), Sch 18; and prospectively repealed (see note 1)).

8 Ie nothing in the Local Government Act 1972 s 94: see PARA 286.

9 Local Government Act 1972 s 97(3) (amended by the Local Government (Wales) Act 1994 Sch 15 para 25(b), Sch 18; and prospectively repealed (see note 1)).

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B. COUNCIL TAX AND COMMUNITY CHARGE ARREARS

293. Council tax and community charge arrears.

If a sum by way of council tax¹ has become payable by a member² and has remained unpaid for at least two months, where that member is present at a meeting at which relevant matters³ are discussed he must disclose the fact that he is in arrears and must not vote on any question with respect to the matter concerned⁴.

1 I.e. under Local Government and Finance Act 1992 Sch 4 para 1(1)(a): see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 310. As to council tax generally see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq.

2 I.e. a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities (including in either case a sub-committee), or a council manager within the meaning of the Local Government Act 2000 s 11(4)(b) (PARA 327): see the Local Government Finance Act 1992 s 106(1); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 351.

3 I.e. (1) any calculation required by the Local Government Finance Act 1992, Pt I, Chapters III, IV or IVA; (2) any recommendation, resolution or other decision which might affect the making of any such calculation; or (3) the exercise of any functions under the Local Government and Finance Act 1992 Sch 2 to 4: see the Local Government Finance Act 1992 s 106(2)(a)-(c); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 351.

4 See the Local Government Finance Act 1992 s 106; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 351.

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(7) TERMINATION, VACANCY, AND SUSPENSION OF OFFICE

294. Non-acceptance of office.

If a person elected¹ to the office of chairman, vice-chairman, councillor or elected mayor² of the council of a county, county borough, district or London borough³ does not make the declaration of acceptance of office⁴ and deliver it to the proper officer⁵ within the appointed time⁶, the office of the person elected becomes vacant on the expiration of that time⁷.

If a person elected to the office of chairman of a parish or community council or parish or community councillor does not make a declaration of acceptance of office⁸ in the presence of a member of the council or of the proper officer of the council and deliver it to the council, the office of the person elected becomes vacant⁹.

1 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

- 2 As to the office of chairman and vice-chairman see PARA 144 et seq; and as to elected mayors see PARA 322.
- 3 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.
- 4 As to the duty to make such a declaration see PARA 143.
- 5 As to proper officers see PARA 431.
- 6 le within two months from the day of the election: see the Local Government Act 1972 s 83(1); and PARA 143.
- 7 See the Local Government Act 1972 s 83(2); and PARA 143. As to the date and notice of casual vacancies see PARA 299.
- 8 As to the duty to make such a declaration see PARA 143.
- 9 See the Local Government Act 1972 s 83(4); and PARA 143.

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295. Failure to give an undertaking to comply with code of conduct.

If a person who is a member¹ or co-opted member² of a relevant authority³ at a time when the authority adopts a code of conduct for the first time⁴ fails, before the end of the permitted period⁵, to give the authority a written undertaking that in performing his functions he will observe the authority's code of conduct for the time being⁶, he ceases to be a member or co-opted member at the end of that period⁷.

- 1 As to the meaning of 'member of a relevant authority' see PARA 232 note 2.
- 2 As to the meaning of 'co-opted member' see PARA 232 note 3.
- 3 As to the meaning of 'relevant authority' see PARA 232 note 4.
- 4 le under the Local Government Act 2000 s 51 (see PARA 235). As to the meaning of 'code of conduct' see PARAS 234-235.
- 5 le before the end of the period of two months beginning with the date on which the code of conduct is adopted: Local Government Act 2000 s 52(1)(a).
- 6 As to the duty to give such an undertaking see the Local Government Act 2000 s 52(1)(a); and PARA 236. This provision is amended by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 15 so as to remove the reference to 'in performing his functions'; the amendment has been brought into force for Wales (see the Local Government and Public Involvement in Health Act 2007 (Commencement No 2 and Savings) Order 2008, SI 2008/172), but at the date at which this volume states the law it had not been brought into force in relation to England.
- 7 Local Government Act 2000 s 52(1)(b). The time limit only operates against a person who was aware of the duty to give the undertaking: *R (Meredith) v Merthyr Tydfil County Borough Council* [2002] EWHC 634 (Admin). See also the following cases as to breaches of the code of conduct: *Hare v Marcar* [2006] EWHC 822 (Admin), [2006] LGR 567; *Sanders v Kingston* [2005] EWHC 1145 (Admin), [2005] LGR 719; *Murphy v Ethical Standards Officer of the Standards Board for England* [2004] EWHC 2377 (Admin), [2005] LGR 161; *R (on the application of Richardson) v North Yorkshire County Council* [2003] EWCA Civ 1860, [2004] 2 All ER 31, [2004] 1 WLR 1920.

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296. Failure to attend meetings.

If a member of a local authority¹ fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he will, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of that authority². Attendance as a member at a meeting of any committee or sub-committee³ of the authority, or at a meeting of any joint committee⁴, joint board⁵ or other body by which for the time being any of the functions of the authority are being discharged⁶ or which was appointed to advise the authority on any matter relating to the discharge of its functions, and attendance as representative of the authority at a meeting of any body of persons, is deemed to be attendance at a meeting of the authority⁷.

If a member of a local authority which is operating executive arrangements, who is also a member of its executive, fails throughout a period of six consecutive months from the last date of attendance to attend any meeting of the executive, he will, unless the failure was due to some reason approved by the local authority before the expiry of that period, cease to be a member of the authority⁸. For these purposes:

- 553 (1) the discharge by a member, acting alone, of any function which is the responsibility of the executive⁹; and
- 554 (2) in respect of a manager of a mayor and cabinet executive or leader and cabinet executive, attendance as a member at a meeting of a committee of the executive¹⁰,

is each to be deemed to be attendance at a meeting of the executive¹¹.

A member of any branch of Her Majesty's naval, military or air forces when employed during war or any emergency¹² on any naval, military or air force service, and a person whose employment in the service of Her Majesty in connection with war or any emergency is such as, in the opinion of the Secretary of State or Welsh Ministers¹³, to entitle him or them to relief from disqualification on account of absence, will not cease to be a member of a local authority by reason only of a failure to attend meetings of the local authority or a failure to attend meetings of the executive if the failure is due to that employment¹⁴.

Any period during which a member of a local authority is suspended or partially suspended¹⁵ is to be disregarded for the purpose of calculating the period of six consecutive months and, accordingly, a period during which a member fails to attend meetings of the authority or, as the case may be, meetings of the executive, that falls immediately before, and another such period that falls immediately after, a period of suspension or partial suspension is to be treated as consecutive¹⁶.

1 For these purposes, 'local authority' includes a joint authority and a joint waste authority: Local Government Act 1972 s 85(4) (added by the Local Government Act 1985 Sch 14 para 7; amended by the Education Reform Act 1988 Sch 13 Pt 1; and the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 1, 4). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51.

2 Local Government Act 1972 s 85(1). This is subject to s 85(2), (3) (see the text and notes 3-7, 12-14): s 85(1). Where a member loses his office through failure to attend for the relevant period, this cannot be overcome by his subsequently resuming attendance: *R v Hunton, ex p Hodgson* (1911) 75 JP 335, DC. If no meetings are held in the relevant period, there will have been no failure to attend: *Re Hogan's Application* [1986] 5 NIJB 81; *Re Neeson's Application* [1986] NI 92, [1986] 13 NIJB 24. As to the declaration of a vacancy see PARA 298.

- 3 As to committees and sub-committees see PARA 371 et seq.
- 4 As to joint committees see PARA 380.
- 5 As to joint boards see PARA 10.
- 6 As to the discharge of functions see PARA 369 et seq.
- 7 Local Government Act 1972 s 85(2).
- 8 Local Government Act 1972 s 85(2A) (added, in relation to England, by SI 2001/2237; and, in relation to Wales, by SI 2002/808). This is subject to the Local Government Act 1972 s 85(2B), (3) (see the text and notes 9-12): s 85(2A) (as so added).
- 9 Local Government Act 1972 s 85(2B)(a) (s 85(2B) added, in relation to England, by SI 2001/2237; and, in relation to Wales, by SI 2002/808).
- 10 Local Government Act 1972 s 85(2B)(b) (as added: see note 9).
- 11 Local Government Act 1972 s 85(2B) (as added: see note 9).
- 12 As to war and emergency see **WAR AND ARMED CONFLICT**. See also **ARMED FORCES**.
- 13 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 14 Local Government Act 1972 s 85(3) (amended, in relation to England, by SI 2001/2237; and, in relation to Wales, by SI 2002/808).
- 15 le under the Local Government Act 2000 s 66 (see PARA 258), s 66A (see PARA 258), s 73 (see PARA 275), s 78 (see PARA 281), s 78A (see PARA 282) or s 79 (see PARA 283).
- 16 Local Government Act 1972 s 85(3A) (added by the Local Government Act 2000 Sch 5 para 9; amended by the Local Government and Public Involvement in Health Act 2007 s 201(4)(a); and further amended, in relation to England, by SI 2001/2237; and, in relation to Wales, by SI 2002/808).

UPDATE

296 Failure to attend meetings

NOTE 1--Local Government Act 1972 s 85(4) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 13.

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297. Resignation.

A person elected¹ to any office under the Local Government Act 1972 or elected as an elected mayor² may generally resign his office at any time by written notice³ delivered to the proper officer⁴ of the council⁵. In the case of a person elected to a corporate office in a London borough⁶, the person elected may resign his office by written notice delivered to the proper officer of the borough⁷; in the case of a parish or community councillor, notice must be given to the chairman of the parish or community council⁸; and in the case of a chairman of a parish or community council or of a parish meeting, notice must be given to the council or the meeting, as the case may be⁹. The resignation takes effect upon the receipt of the notice by the person or body to whom it is required to be delivered¹⁰.

A person elected or appointed to an office under the Local Government Act 1985¹¹ may at any time resign his office by written notice delivered to the proper officer of the authority of which he is a member, and his resignation will take effect upon the receipt of the notice by that officer¹².

A person will be deemed to be disqualified for acting as a member of a local authority if by reason of his resignation he has ceased to be a member of the authority¹³.

1 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

2 As to elected mayors see PARA 322.

3 As to the service of notice see PARA 576.

4 Ie except in a case falling within the Local Government Act 1972 s 84(1)(b), (c) or (d): see the text and notes 6-10. As to proper officers see PARA 431.

5 See the Local Government Act 1972 s 84(1)(a) (s 84(1) renumbered by the Local Government Act 1985 Sch 14 para 6; amended by the Local Government Act 2000 Sch 3 para 10). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

6 As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**.

7 See the Local Government Act 1972 s 84(1)(b) (as renumbered: see note 5).

8 See the Local Government Act 1972 s 84(1)(c) (as renumbered: see note 5).

9 See the Local Government Act 1972 s 84(1)(d) (as renumbered: see note 5).

10 See the Local Government Act 1972 s 84(1) (as renumbered: see note 5).

11 Ie under the Local Government Act 1985 Pt IV (ss 23-42): see PARA 47 et seq.

12 Local Government Act 1972 s 84(2) (added by the Local Government Act 1985 Sch 14 para 6; amended by the Education Reform Act 1988 Sch 13 Pt I).

13 See the Local Government Act 1972 s 92(6)(b). Proceedings may be brought against any person on the ground that he acted or claims to be entitled to act as a member of a local authority while disqualified for so acting: see the Local Government Act 1972 s 92; and PARA 301.

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298. Declaration by local authority of casual vacancy in office.

Where a member of a local authority¹:

- 555 (1) ceases to be qualified to be a member of the authority²; or
- 556 (2) becomes disqualified³ for being a member of the authority otherwise than under the Audit Commission Act 1998⁴ or the Local Government Act 2000⁵ or by virtue of a conviction or a breach of any provision of Part II of the Representation of the People Act 1983⁶; or
- 557 (3) ceases to be a member of the authority by reason of failure to attend meetings of the authority⁷,

the authority must, except in any case in which a declaration has been made by the High Court⁸, forthwith declare his office to be vacant⁹.

A vacancy will also arise in the office of councillor:

- 558 (a) if the person who is returned at an election as the elected mayor of a local authority is also returned at an election held at the same time as a councillor of the authority¹⁰; or
- 559 (b) if the person who is returned at an election as the elected mayor of a local authority is a councillor of the authority, and was returned as such a councillor at an election held at an earlier time than the mayoral election¹¹.

1 For these purposes, 'local authority' includes a joint authority and a joint waste authority: Local Government Act 1972 s 86(2) (added by the Local Government Act 1985 Sch 14 para 8; amended by the Education Reform Act 1988 Sch 13 Pt I; and by the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 1, 5). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51.

2 Local Government Act 1972 s 86(1)(a) (s 86(1) renumbered by the Local Government Act 1985 Sch 14 para 8).

3 As to disqualification for membership see PARA 119.

4 As to the Audit Commission see PARA 744 et seq.

5 Ie under the Local Government Act 2000 s 66A, s 78A or s 79: see PARAS 258, 283.

6 Local Government Act 1972 s 86(1)(b) (as renumbered (see note 2); amended by the Representation of the People Act 1983 Sch 8 para 12; the Audit Commission Act 1998 Sch 3 para 3(2); the Local Government Act 2000 Sch 5 para 10; and the Local Government and Public Involvement in Health Act 2007 s 201(4)(b)). As to the Representation of the People Act 1983 Pt II (ss 67-119) see **ELECTIONS AND REFERENDUMS**.

7 Local Government Act 1972 s 86(1)(c) (as renumbered: see note 2). As to failure to attend meetings see PARA 296.

8 Ie a declaration of vacancy under the Local Government Act 1972 Pt V (ss 79-100).

9 Local Government Act 1972 s 86(1) (as renumbered: see note 2). See *R v Leeds Corpn* (1838) 7 Ad & El 963; *R (on the prosecution of Owen) v Welchpool Corpn* (1876) 35 LT 594; *Pease v Lowden* [1899] 1 QB 386, DC. It is the disqualifying event, such as the bankruptcy, which brings an end to the membership of the local authority, not the declaration of a vacancy: *R v Havant Borough Council, ex p Mincham* (5 October 1990) Lexis. The Local Government Act 1972 s 86 only authorises a declaration by the local authority where a member ceases to be qualified or becomes disqualified, it does not authorise a declaration where the member was not qualified to be elected: *Islington London Borough Council v Camp* [2004] LGR 58.

10 See the Local Government Act 2000 s 40(1); and PARA 323.

11 See the Local Government Act 2000 s 40(2); and PARA 323.

UPDATE

298 Declaration by local authority of casual vacancy in office

NOTE 1--Local Government Act 1972 s 86(2) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 14.

299. Date and notice of casual vacancies.

For the purpose of filling a casual vacancy¹ in any office for which an election² is held under the Local Government Act 1972, or in the office of elected mayor³, the date on which the vacancy is deemed to have occurred is:

- 560 (1) in the case of non-acceptance of office by any person who is required to make and deliver a declaration of acceptance of office⁴, on the expiration of the period appointed⁵ for the delivery of the declaration⁶;
- 561 (2) in the case of resignation, upon the receipt of the notice of resignation⁷ by the person or body to whom the notice is required to be delivered⁸;
- 562 (3) in the case of death, on the date of death⁹;
- 563 (4) in the case of a disqualification under the Audit Commission Act 1998¹⁰ or by virtue of a conviction, on the expiration of the ordinary period allowed for making an appeal or application with respect to the relevant order or decision under the Act¹¹ or, as the case may be, that conviction or, if an appeal or application is made, on the date on which that appeal or application is finally disposed of or abandoned or fails by reason of its non-prosecution¹²;
- 564 (5) in the case of an election declared void on an election petition, on the date of the report or certificate of the election court¹³;
- 565 (6) in the case of a disqualification under the Local Government Act 2000¹⁴, on the expiration of the ordinary period allowed for making an appeal or application with respect to the relevant decision¹⁵, or, if an appeal or application is made, on the date on which that appeal or application is finally disposed of or abandoned or fails by reason of its non-prosecution¹⁶;
- 566 (7) in the case of a person ceasing to be qualified¹⁷ to be a member of a local authority, or becoming disqualified¹⁸, for any reason other than one mentioned in heads (1) to (6) above, or ceasing to be a member by reason of failure to attend meetings¹⁹, on the date on which his office is declared to have been vacated either by the High Court²⁰ or by the local authority, as the case may be²¹.

Public notice of any such casual vacancy must be given by the local authority in which the office exists²². The steps required to be taken to give public notice²³ must be taken in a case where the local authority declares the office to be vacant, immediately after the declaration; and in any other case, as soon as practicable after the date²⁴ on which the vacancy is deemed to have occurred²⁵.

1 As to the declaration of a vacancy see PARA 298.

2 As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

3 As to elected mayors see PARA 322.

4 As to the declaration of acceptance of office see PARA 143.

5 I.e. under the Local Government Act 1972 Pt V (ss 79-100).

6 Local Government Act 1972 s 87(1)(a). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(a).

7 As to resignation see PARA 297.

8 Local Government Act 1972 s 87(1)(b). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(b). As to the person or body to whom the notice is required to be delivered see PARA 297.

9 Local Government Act 1972 s 87(1)(c). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(c).

10 As to disqualification under the Audit Commission Act 1998 see PARA 744 et seq. The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, refer to disqualification under the Local Government Finance Act 1982 Pt III (s 11-36) (repealed).

11 le under the Audit Commission Act 1998, or the Local Government Finance Act 1982 Pt III (repealed) (see note 10).

12 Local Government Act 1972 s 87(1)(d) (amended by the Audit Commission Act 1998 Sch 3 para 3(3)). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(d).

13 Local Government Act 1972 s 87(1)(e). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(e). As to reports or certificates of the election court see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARAS 859-860.

14 As to disqualification under the Local Government Act 2000 see ss 66A, 78A, 79; and PARAS 258, 283.

15 le under the Local Government Act 2000 s 66A, s 78A or s 79: see PARAS 258, 283.

16 Local Government Act 1972 s 87(1)(ee) (added by the Local Government Act 2000 Sch 5 para 11(a); amended by the Local Government and Public Involvement in Health Act 2007 s 201(4)(c)). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(f).

17 See PARA 117.

18 See PARA 119.

19 As to failure to attend meetings see PARA 296.

20 As to High Court proceedings for disqualification see PARA 301.

21 Local Government Act 1972 s 87(1)(f) (amended by the Local Government Act 2000 Sch 5 para 11(b)). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1)(g).

22 See the Local Government Act 1972 s 87(2).

23 le in accordance with the Local Government Act 1972 s 232 (see PARA 577).

24 The text refers to the date on which by virtue of the Local Government Act 1972 s 87(1) or the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(1) (see the text and notes 1-21) the vacancy is deemed to have occurred: Local Government Act 1972 s 87(2); Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2).

25 See the Local Government Act 1972 s 87(2). See also the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544, reg 8(2).

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300. Suspension and disqualification for failure to comply with code of conduct.

A member who is found to have failed to comply with his authority's code of conduct¹ may be suspended by a standards committee or case tribunal², or disqualified by a case tribunal³.

1 As to codes of conduct see PARAS 234-235.

2 See PARAS 238-242, 278-284. As to standards committees see PARA 238; and as to case tribunals see PARA 279.

3 See PARAS 278-284.

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301. Proceedings for disqualification.

Proceedings against any person on the ground that he acted or claims to be entitled to act as a member of a local authority¹ while disqualified for so acting² may be instituted by, and only by, any local government elector³ for the area concerned: (1) in the High Court or a magistrates' court if that person so acted⁴; and (2) in the High Court if that person claims to be entitled to so act⁵.

Where in such proceedings it is proved that the defendant has acted as a member of a local authority while disqualified for so acting, then:

567 (a) if the proceedings are in the High Court, the High Court may⁶:

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46. (i) make a declaration to that effect and declare that the office in which the defendant has acted is vacant⁷;

47. (ii) grant an injunction restraining the defendant from so acting⁸;

48. (iii) order that the defendant is to forfeit to Her Majesty such sum as the court thinks fit⁹, for each occasion on which he so acted while disqualified¹⁰;

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568 (b) if the proceedings are in a magistrates' court, the magistrates' court may¹¹ convict the defendant and impose on him a fine¹² for each occasion on which he so acted while disqualified¹³.

Where, in proceedings instituted in the High Court, it is proved that the defendant claims to act as a member of a local authority and is disqualified for so acting, the court may make a declaration to that effect and declare that the office in which the defendant claims to be entitled to act is vacant and grant an injunction restraining him from so acting¹⁴.

1 For these purposes, 'local authority' includes a joint authority and a joint waste authority: Local Government Act 1972 s 92(7) (added by the Local Government Act 1985 Sch 14 para 12; amended by the Education Reform Act 1988 Sch 13 Pt I); Local Government Act 1972 s 92(7A) (added by the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 1, 6). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51.

2 For these purposes, a person is deemed to be disqualified for acting as a member of a local authority if: (1) he is not qualified to be, or is disqualified for being, a member of the authority; or (2) by reason of failure to make and deliver the declaration of acceptance of office within the period required, or by reason of resignation or failure to attend meetings of the local authority, he has ceased to be a member of the authority: Local Government Act 1972 s 92(6). As to declaration of acceptance of office see PARA 143. As to disqualification see PARA 119. As to resignation see PARA 297. As to failure to attend meetings see PARA 296.

3 As to the meaning of 'local government elector' see PARA 127 note 2. For these purposes, in relation to a joint authority, the reference to a local government elector for the area concerned is to be construed as a reference to a local government elector for any local government area in the area for which the authority is established: Local Government Act 1972 s 92(7) (as added: see note 1). The reference to a local government

elector in relation to a joint waste authority established for an area that includes: (1) a local government area, is to be construed as including a reference to a local government elector for that local government area (s 92(7B)(a) (s 92(7B) added by the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 1, 6)); (2) the City of London, is to be construed as including a reference to a person whose name appears in a ward list published under the City of London (Various Powers) Act 1957 s 7 (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 41) (Local Government Act 1972 s 92(7B)(b) (as so added)); (3) the Inner Temple or the Middle Temple, is to be construed as including a reference to a person whose name appears in the ward list published with respect to the ward of Farringdon Without in the City under the City of London (Various Powers) Act 1957 s 7 (Local Government Act 1972 s 92(7B)(c) (as so added)). In relation to the Broads Authority, the reference to a local government elector for the area concerned is to be construed as a reference to a local government elector for the area of any of the local authorities mentioned in the Norfolk and Suffolk Broads Act 1988 s 1(3)(a) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 734): Local Government Act 1972 s 92(8) (added by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 10(3)). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

4 Local Government Act 1972 s 92(1)(a). Proceedings under s 92(1)(a) may not be instituted against any person after the expiration of more than six months from the date on which he acted while disqualified: see s 92(1).

Where proceedings under s 92 are instituted in a magistrates' court, then: (1) if the court is satisfied that the matter would be more properly dealt with in the High Court, it must by order discontinue the proceedings; (2) if the High Court, on application made to it by the defendant within 14 days after service of the claim form, is satisfied that the matter would be more properly dealt with in the High Court, it may make an order, which is not subject to any appeal, requiring the magistrates' court by order to discontinue the proceedings: s 92(3).

Where a person continues to act over a period greater than six months, the limitation period will run from the latest date he so acted: *Islington London Borough Council v Camp* [2004] LGR 58, doubting *Bishop v Deakin* [1936] Ch 409, [1936] 1 All ER 295.

5 Local Government Act 1972 s 92(1)(b). Proceedings must not be instituted against a person otherwise than under s 92 on the ground that he has while disqualified for acting as a member of a local authority so acted, or claimed to be entitled so to act: s 92(5).

6 Local Government Act 1972 s 92(2)(a).

7 Local Government Act 1972 s 92(2)(a)(i).

8 Local Government Act 1972 s 92(2)(a)(ii).

9 ie a sum not exceeding £50.

10 Local Government Act 1972 s 92(2)(a)(iii).

11 ie subject to the provisions of the Local Government Act 1972 s 92.

12 ie a fine not exceeding level 3 on the standard scale. As to the standard scale see PARA 105 note 7.

13 Local Government Act 1972 s 92(2)(b) (amended by the Criminal Justice Act 1982 ss 37, 38, 46).

14 Local Government Act 1972 s 92(4).

UPDATE

301 Proceedings for disqualification

NOTE 3--Local Government Act 1972 s 92(7) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 15.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/2. MEMBERS OF LOCAL AUTHORITIES/(7) TERMINATION, VACANCY, AND SUSPENSION OF OFFICE/302. Removal from office under executive arrangements.

302. Removal from office under executive arrangements.

Deputy mayors, interim mayors, interim members and executive members¹ holding office under executive arrangements² may be removed from office³.

1 As to deputy mayors see PARA 150 et seq; as to interim mayors and interim members see PARA 153; and as to executive members see PARA 320.

2 As to executive arrangements see PARA 303 et seq.

3 See PARAS 153, 158.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(i) Executive and Alternative Arrangements/A. OVERVIEW/303. Executive and alternative arrangements.

3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS

(1) INTRODUCTION

(i) Executive and Alternative Arrangements

A. OVERVIEW

303. Executive and alternative arrangements.

Part II of the Local Government Act 2000¹ stipulates permissible management structures for local authorities² in England and Wales, and requires local authorities to make executive arrangements. 'Executive arrangements' are arrangements by a local authority for and in connection with the creation and operation of an executive of the authority, and under which certain functions of the authority are the responsibility of the executive³. Executive arrangements by a local authority must conform with any provisions made by or under Part II of the Local Government Act 2000 which relate to such arrangements⁴. Under the arrangements, a local authority executive is to implement policies⁵ agreed by the full council, and the executive is to be held accountable by overview and scrutiny committees⁶. The executive may take one of several forms⁷, and in certain small districts alternative arrangements may be made⁸.

1 Ie the Local Government Act 2000 Pt II (ss 10-48).

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 10(1). As to provisions that must be included in executive arrangements see PARA 351.

4 Local Government Act 2000 s 10(2). As to the functions which are the responsibility of an executive see PARA 324.

5 As to the local authority constitution see PARA 306; and as to the community strategy see PARA 464.

6 As to overview and scrutiny committees see PARA 342 et seq.

7 As to the forms of local authority executives see PARA 327 et seq.

8 As to alternative arrangements see PARA 364 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(i) Executive and Alternative Arrangements/B. ORDERS AND GUIDANCE/304. Power to make orders.

B. ORDERS AND GUIDANCE

304. Power to make orders.

The Secretary of State or the Welsh Ministers¹ may by order make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision made by or under Part II of the Local Government Act 2000². The provision which may be so made includes provision modifying any enactment³. The power to modify an enactment is a power:

- 189 (1) to apply that enactment with or without modifications⁴;
- 190 (2) to extend, disapply or amend that enactment⁵; or
- 191 (3) to repeal or revoke that enactment with or without savings⁶.

In addition, the Secretary of State may by order make transitional, saving or transitory provision for the purposes of supplementing or giving full effect to, or making provision consequential on the passing of, Part III of the Local Government and Public Involvement in Health Act 2007⁷.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Local Government Act 2000 s 47(1). As to the orders that have been made, with regard to England see the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, and the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237. With regard to Wales see Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002, SI 2002/808, and Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/803.

3 Local Government Act 2000 s 47(2). 'Enactment' includes an enactment contained in a local Act or comprised in subordinate legislation: s 48(1).

4 Local Government Act 2000 s 47(3)(a).

5 Local Government Act 2000 s 47(3)(b).

6 Local Government Act 2000 s 47(3)(c).

7 See the Local Government and Public Involvement in Health Act 2007 Sch 4 para 13.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(i) Executive and Alternative Arrangements/B. ORDERS AND GUIDANCE/305. Guidance.

305. Guidance.

When operating executive arrangements and/or adopting a constitution under Part II of the Local Government Act 2000¹, a local authority² must have regard to any guidance for the time

being issued by the Secretary of State or the Welsh Ministers³. Such guidance may make different provision for different cases or descriptions of local authority⁴.

1 le the Local Government Act 2000 Pt II (ss 10-48).

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 38(1). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. The current guidance, Local Government Act 2000--Guidance to English Local Authorities and the Modular Constitutions for English Local Authorities, October 2000, addresses both executive arrangements (PARA 308 et seq) and the requirement for constitutions and their content (PARA 306). Given its changing nature, it is not given detailed treatment in this work and reference should be had to the extant guidance which can be obtained from the appropriate government department's website.

4 Local Government Act 2000 s 38(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(i) Executive and Alternative Arrangements/C. CONSTITUTIONS/306. Constitutions.

C. CONSTITUTIONS

306. Constitutions.

A local authority¹ which is operating executive arrangements² or alternative arrangements³ must prepare and keep up to date a document (the 'constitution') which contains:

- 192 (1) such information as the Secretary of State⁴ may direct⁵;
- 193 (2) a copy of the authority's standing orders for the time being⁶;
- 194 (3) a copy of the authority's code of conduct for the time being⁷; and
- 195 (4) such other information, if any, as the authority considers appropriate⁸.

The Code of Guidance⁹, to which authorities must have regard, contains a model constitution¹⁰. The guidance provides that a number of principles should apply to all decisions of an authority: proportionality; respect for human rights; a presumption in favour of openness; clarity of aims and desired outcomes; and a requirement for due consultation and professional advice from officers¹¹.

A local authority must ensure that copies of its constitution are available at its principal office for inspection by members of the public at all reasonable hours¹². A local authority must supply a copy of its constitution to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine¹³.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'executive arrangements' see PARA 303.

3 As to the meaning of 'alternative arrangements' see PARA 364.

4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 Local Government Act 2000 s 37(1)(a). As to directions see PARA 312 note 12.

6 Local Government Act 2000 s 37(1)(b).

7 Local Government Act 2000 s 37(1)(c). As to the code of conduct see s 51; and PARA 232 et seq. In relation to an authority whose members and co-opted members are subject to mandatory provisions by virtue of s 51(5) (b) (see PARA 235), the reference in s 37(1)(c) to the authority's code of conduct for the time being under s 51 is to the mandatory provisions which for the time being apply to the members and co-opted members of the authority: s 37(4) (added by the Local Government and Public Involvement in Health Act 2007 s 184(1)).

8 Local Government Act 2000 s 37(1)(d). See also the Local Government Act 2000 (Constitutions) (England) Direction 2000.

9 See PARA 305 concerning guidance.

10 See the Local Government Act 2000--Guidance to English Local Authorities Chapter 10.

11 See the Local Government Act 2000--Guidance to English Local Authorities para.7.3.

12 Local Government Act 2000 s 37(2).

13 Local Government Act 2000 s 37(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(i) Executive and Alternative Arrangements/D. MEETINGS AND PROCEDURE/307. Meetings and procedure of executives and committees.

D. MEETINGS AND PROCEDURE

307. Meetings and procedure of executives and committees.

Executive arrangements¹ by a local authority² may include provision with respect to: (1) the quorum, proceedings and location of meetings of the executive³; (2) the appointment of committees of the executive⁴; and (3) the quorum, proceedings and location of meetings of committees of the executive⁵.

A member of a local authority who is not a member of the authority's executive is entitled to attend, and speak at, a meeting of the executive, or of a committee of the executive, which is held in private only if invited to do so⁶.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local government' see PARA 23.

3 Local Government Act 2000 Sch 1 para 4(a). As to meetings generally see PARA 619 et seq.

4 Local Government Act 2000 Sch 1 para 4(b). As to committees generally see PARA 369 et seq.

5 Local Government Act 2000 Sch 1 para 4(c).

6 Local Government Act 2000 Sch 1 para 5.

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(ii) Establishing Executive Arrangements

A. PUBLICITY

308. Introduction.

Before operating executive arrangements¹ for the first time, a local authority² must draw up proposals for the operation of executive arrangements³. A referendum must be held where the proposals involve certain forms of executive⁴. The local authority must pass a resolution for the operation of executive arrangements⁵ and, where there is to be an elected mayor⁶ or elected executive members⁷, an election must be held⁸.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local authority' see PARA 23.

3 See PARA 312 et seq.

4 See PARA 316 et seq.

5 See the Local Government Act 2000 s 29(1); and PARA 309.

6 As to the meaning of 'elected mayor' see Local Government Act 2000 s 39(1); and PARA 320 note 4.

7 As to the meaning of 'elected executive member' see PARA 320 note 5.

8 See PARA 320 et seq. As to elections generally see **ELECTIONS AND REFERENDUMS**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(1) INTRODUCTION/(ii) Establishing Executive Arrangements/A. PUBLICITY/309. Operation of, and publicity for, executive arrangements.

309. Operation of, and publicity for, executive arrangements.

A resolution of a local authority¹ is required in order for the authority to operate executive arrangements². As soon as practicable after passing such a resolution a local authority must secure that copies of a document setting out the provisions of the arrangements are available at its principal office for inspection by members of the public at all reasonable hours³. A local authority must also, as soon as practicable after passing the resolution, publish in one or more newspapers circulating in its area a notice which⁴:

- 196 (1) states that it has resolved to operate the arrangements⁵;
- 197 (2) states the date on which it is to begin operating the arrangements⁶;
- 198 (3) describes the main features of the arrangements⁷;
- 199 (4) states that copies of a document setting out the provisions of the arrangements are available at its principal office for inspection by members of the public at such times as may be specified in the notice⁸; and
- 200 (5) specifies the address of its principal office⁹.

A local authority in Wales which passes a resolution for the operation of executive arrangements¹⁰ may not at any subsequent time cease to operate executive arrangements unless the authority operates alternative arrangements¹¹ in place of the executive arrangements¹².

1 As to the meaning of 'local authority' see PARA 23. The Local Government Act 1972 s 101 (arrangements for the discharge of functions by local authorities) (see PARA 370) does not apply to the function of the passing of a resolution under any provision made by or under the Local Government Act 2000 Pt II (ss 10-48): s 48(5).

2 Local Government Act 2000 s 29(1). As to the meaning of 'executive arrangements' see PARA 303.

3 Local Government Act 2000 s 29(2)(a).

4 Local Government Act 2000 s 29(2)(b).

5 Local Government Act 2000 s 29(2)(b)(i).

6 Local Government Act 2000 s 29(2)(b)(ii).

7 Local Government Act 2000 s 29(2)(b)(iii).

8 Local Government Act 2000 s 29(2)(b)(iv).

9 Local Government Act 2000 s 29(2)(b)(v).

10 Ie under the Local Government Act 2000 s 29.

11 Ie by virtue of any provision made under the Local Government Act 2000 s 33(5): see PARA 366. As to alternative arrangements see PARA 364 et seq.

12 See the Local Government Act 2000 s 29(3) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 paras 22, 23).

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310. Operation of different executive arrangements with regard to England.

A local authority¹ in England which is operating executive arrangements may: (1) vary the arrangements so that they provide for a different form of executive²; and (2) if it makes such a variation, vary the arrangements in such other respects (if any) as it considers appropriate³.

1 As to the meaning of 'local authority' see PARA 23.

2 Local Government Act 2000 s 33A(a) (added by the Local Government and Public Involvement in Health Act 2007 s 64).

3 Local Government Act 2000 s 33A(b) (as added: see note 2).

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311. Operation of different executive arrangements with regard to Wales.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision for or in connection with the operation by a local authority in Wales² which is operating existing

executive arrangements³ of different executive arrangements which differ from the existing arrangements in any respect⁴. The provision which may so be made includes provision⁵:

- 201 (1) which applies or reproduces, with or without modifications, any provisions relating to the procedure of operating executive arrangements⁶;
- 202 (2) for or in connection with requiring the consent of an elected mayor⁷ under the existing arrangements to the operation of the different arrangements⁸;
- 203 (3) with respect to changes to the existing arrangements as a result of changes to the functions which are the responsibility of an executive⁹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'local authority' see PARA 23.

3 As to the meaning of 'executive arrangements' see PARA 303.

4 Local Government Act 2000 s 30(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 24). As to the regulations that have been made under the Local Government Act 2000 s 30 see the Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (England) Regulations 2001, SI 2001/1003; however, in light of amendments made by the Local Government and Public Involvement in Health Act 2007 these regulations are now considered spent. In exercise of his powers under the Local Government Act 2000 s 33(5), (7), (9) the Secretary of State has also made the Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004, SI 2004/3158.

5 Local Government Act 2000 s 30(2). However, nothing in s 30(2) affects the generality of the power under s 30(1) (see the text and notes 1-4): s 30(3).

6 Local Government Act 2000 s 30(2)(a). The provisions referred to in the text are those of s 25, 26, 27, 28 or s 29: see PARAS 309, 312-314.

7 As to the meaning of 'elected mayor' see the Local Government Act 2000 s 39(1); and PARA 320 note 4.

8 Local Government Act 2000 s 30(2)(b).

9 Local Government Act 2000 s 30(2)(c). As to the functions which are the responsibility of local authority executive see PARA 324.

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B. PROPOSALS

312. Proposals.

Every local authority¹ must² draw up proposals for the operation of executive arrangements³, and send a copy of the proposals to the Secretary of State⁴. Before drawing up such proposals, a local authority must take reasonable steps to consult the local government electors⁵ for, and other interested persons in, the authority's area⁶. In drawing up such proposals, a local authority must decide which form the executive⁷ is to take⁸, and the extent to which certain functions⁹ are to be the responsibility of the executive¹⁰. In drawing up proposals, a local authority must consider the extent to which the proposals, if implemented, are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness¹¹.

Proposals under these provisions must include:

- 204 (1) such details of the executive arrangements as the Secretary of State may direct¹²;
- 205 (2) a timetable with respect to the implementation of the proposals¹³; and
- 206 (3) details of any transitional arrangements which are necessary for the implementation of the proposals¹⁴.

A copy of the proposals which is sent to the Secretary of State must be accompanied by a statement which describes the steps which the authority took to consult the local government electors for, and other interested persons in, the authority's area¹⁵, and the outcome of that consultation and the extent to which that outcome is reflected in the proposals¹⁶.

The Secretary of State may by order specify a date by which every local authority, or every local authority falling within any description of authority specified in the order, must comply with these provisions¹⁷.

- 1 As to the meaning of 'local authority' see PARA 23.
- 2 le subject to the Local Government Act 2000 s 31: see PARA 365.
- 3 Local Government Act 2000 s 25(1)(a). As to the meaning of 'executive arrangements' see PARA 303. With regard to variation of governance arrangements see PARA 314.
- 4 Local Government Act 2000 s 25(1)(b). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 5 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by Local Government Act 2000 s 48(1).
- 6 Local Government Act 2000 s 25(2).
- 7 As to the forms of local authority executives see PARA 303 et seq.
- 8 Local Government Act 2000 s 25(3)(a).
- 9 le the functions specified in the regulations under the Local Government Act 2000 s 13(3)(b): see PARA 324.
- 10 See the Local Government Act 2000 s 25(3)(b).
- 11 Local Government Act 2000 s 25(4).
- 12 Local Government Act 2000 s 25(6)(a). A local authority must comply with any directions given by the Secretary of State for the purposes of s 25: s 25(5). Any directions given by the Secretary of State under any provision of Pt II: (1) may be varied or revoked by subsequent directions given by him under that provision; and (2) may make different provision for different cases, local authorities or descriptions of local authority: s 48(7).
- 13 Local Government Act 2000 s 25(6)(b).
- 14 Local Government Act 2000 s 25(6)(c).
- 15 Local Government Act 2000 s 25(7)(a).
- 16 Local Government Act 2000 s 25(7)(b).
- 17 Local Government Act 2000 s 25(8). At the date at which this volume states the law no orders had been made under s 25 with regard to England. The date specified in relation to Wales is 31 January 2002: Local Authorities (Proposals for Executive Arrangements) (Wales) Order 2001, SI 2001/2277.

313. Proposals not requiring referendum.

Where a local authority's proposals¹ for the operation of executive arrangements² do not involve a form of executive³ for which a referendum is required⁴, the authority must implement the proposals in accordance with the timetable included in the proposals⁵.

¹ lie under the Local Government Act 2000 s 25: see PARA 312. As to the meaning of 'local authority' see PARA 23.

² As to the meaning of 'executive arrangements' see PARA 303.

³ As to the forms of local authority executives see PARA 327 et seq.

⁴ As to the forms of local authority executive for which a referendum is required see PARA 314.

⁵ Local Government Act 2000 s 26(1). As to the timetable included in the proposals see PARA 312.

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314. Proposals requiring referendum.

The following are forms of local authority executive¹ for which a referendum² is required:

- 207 (1) an elected mayor and cabinet executive³;
- 208 (2) a mayor and council manager executive⁴;
- 209 (3) a form of executive prescribed in regulations⁵ which is expressed in those regulations to be a form of executive for which a referendum is required⁶;
- 210 (4) where the proposals for implementing the local authority's current form of executive were themselves approved in a referendum⁷; or
- 211 (5) where the local authority's proposals to make a change in governance arrangements⁸ provide for a change in governance arrangements to be subject to approval in a referendum⁹.

Where a local authority's proposals¹⁰ for the operation of executive arrangements¹¹ involve a form of executive for which a referendum is required, the authority:

- 212 (a) must hold a referendum on its proposals before taking any steps to implement them¹²; and
- 213 (b) must draw up and send to the Secretary of State or the Welsh Ministers an outline of the fall-back proposals that it intends to implement if the proposals for the operation of executive arrangements are rejected in a referendum¹³.

Where the result of a referendum¹⁴ is to approve a local authority's proposals for the operation of executive arrangements, the authority must implement the proposals in accordance with the timetable included in the proposals¹⁵. Where the result of a referendum is to reject a local authority's proposals for executive arrangements, the authority:

- 214 (i) may not implement those proposals¹⁶;

- 215 (ii) must draw up detailed fall-back proposals which are based on the outline fall-back proposals¹⁷; and
- 216 (iii) must send a copy of the detailed fall-back proposals to the Secretary of State or the Welsh Ministers¹⁸.

A local authority must implement detailed fall-back proposals in accordance with the timetable included with the outline fall-back proposals¹⁹.

- 1 As to the forms of local authority executives see PARA 303 et seq.
 - 2 As to referendums see PARA 316 et seq; and **ELECTIONS AND REFERENDUMS**.
 - 3 Local Government Act 2000 s 26(2)(a). As to the mayor and cabinet executive generally see PARAS 327, 328.
 - 4 Local Government Act 2000 s 26(2)(b). Only a local authority in Wales may operate a mayor and council manager executive after the coming into force of the Local Government and Public Involvement in Health Act 2007: see PARAS 327, 333.
 - 5 Ie under the Local Government Act 2000 s 11(5): see PARA 327.
 - 6 Local Government Act 2000 s 26(2)(c).
 - 7 Local Government Act 2000 s 33M(1) (added by the Local Government and Public Involvement in Health Act 2007 s 64).
 - 8 Ie under the Local Government Act 2000 s 33E (see PARA 337).
 - 9 Local Government Act 2000 s 33M(2) (as added: see note 7).
 - 10 Ie under the Local Government Act 2000 s 25: see PARA 312. As to the meaning of 'local authority' see PARA 23.
 - 11 Ie those under the Local Government Act 2000 s 25. As to the meaning of 'executive arrangements' see PARA 303.
 - 12 Local Government Act 2000 s 27(1)(a). A local authority may not hold a referendum under s 27 before the end of the period of two months beginning with the date on which a copy of the proposals under s 25 (see PARA 312) is sent to the Secretary of State or the Welsh Ministers: s 27(6).
- As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 13 Local Government Act 2000 s 27(1)(b).
 - 14 Ie a referendum under the Local Government Act 2000 s 27(1): see the text and notes 8-12.
 - 15 Local Government Act 2000 s 27(7). As to the timetable included in the proposals see PARA 312. Where the result of a referendum held by virtue of regulations or an order made under any provision of Pt II is to approve the proposals to which the referendum relates, the local authority concerned must implement those proposals in accordance with any provision made by the regulations or order: s 45(2).
 - 16 Local Government Act 2000 s 27(8)(a). Where the result of a referendum held by virtue of regulations or an order made under any provision of Pt II is to reject the proposals to which the referendum relates, the local authority concerned may not implement those proposals but must instead comply with any provision made by the regulations or order: s 45(3).
 - 17 Local Government Act 2000 s 27(8)(b).
 - 18 Local Government Act 2000 s 27(8)(c).
 - 19 Local Government Act 2000 s 27(13). The timetable referred to in the text is the timetable mentioned in s 27(4): see PARA 315.

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315. Fall back proposals.

Fall-back proposals are proposals for the operation of executive arrangements¹ which do not involve a form of executive for which a referendum is required, or for the operation of alternative arrangements of a particular type² permitted by regulations³.

In drawing up such outline fall-back proposals or detailed fall-back proposals⁴, a local authority must comply with any directions given by the Secretary of State⁵. Outline fall-back proposals and detailed fall-back proposals must include such details of the executive arrangements or alternative arrangements to which they relate as the Secretary of State may direct⁶.

A local authority may apply to the Secretary of State or the Welsh Ministers for the approval of outline fall-back proposals involving fall-back proposals which are not permitted by or under the Local Government Act 2000 Part II⁷ but which would be so permitted if the necessary regulations were made⁸.

The form and content of such an application must comply with any directions given by the Secretary of State or the Welsh Ministers⁹. Where the Secretary of State or the Welsh Ministers approve a local authority's proposals¹⁰: (1) the authority may use those proposals as its outline fall-back proposals for the purposes of the above provisions¹¹; and (2) the timetable¹² is to be extended to the extent that there is any delay in making the necessary regulations¹³.

For the purpose of drawing up outline fall-back proposals, a local authority must take reasonable steps to consult the local government electors¹⁴ for, and other interested persons in, the authority's area¹⁵. Outline fall-back proposals must include a timetable with respect to the implementation of detailed fall-back proposals¹⁶ which are based on the outline fall-back proposals in the event that the proposals for the operation of executive arrangements are rejected in a referendum¹⁷. A local authority must send a copy of its outline fall-back proposals to the Secretary of State at the same time that a copy of the proposals for the operation of executive arrangements is sent to him¹⁸.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 Ie under the Local Government Act 2000 s 32 (see PARA 364).

3 Local Government Act 2000 s 27(2).

4 Ie under the Local Government Act 2000 s 27.

5 Local Government Act 2000 s 27(9).

6 Local Government Act 2000 s 27(10). As to alternative arrangements see PARA 364 et seq.

7 Ie the Local Government Act 2000 ss 10-48.

8 Local Government Act 2000 s 28(1). The necessary regulations mentioned in the text are regulations made under the Local Government Act 2000 s 11(5) (see PARA 327) or s 32 (see PARA 364) as the case may be.

9 Local Government Act 2000 s 28(2). As to directions see PARA 312 note 12.

10 Local Government Act 2000 s 28(3).

11 Ie for the purposes of the Local Government Act 2000 s 27.

12 Ie that referred to in the Local Government Act 2000 s 27(13) (see the text and PARA 314 note 19).

13 le those under the Local Government Act 2000 s 11(5) (see PARA 327) or s 32 (see PARA 364).

14 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by the Local Government Act 2000 s 48(1).

15 Local Government Act 2000 s 27(3).

16 In drawing up detailed fall-back proposals under the Local Government Act 2000 s 27, a local authority must comply with any directions given by the Secretary of State: s 27(9). Outline and detailed fall-back proposals must include such details of the executive arrangements or alternative arrangements to which they relate as the Secretary of State or the Welsh Ministers may direct: s 27(10).

The provisions of s 25(2), (3)(b), (4), (6)(c) apply to detailed fall-back proposals involving executive arrangements as they apply to proposals under s 25 (see PARA 312): s 27(11). The provisions of s 25(2), (4), (6)(c) apply to detailed fall-back proposals involving alternative arrangements as they apply to proposals under s 25 (see PARA 312): s 27(12).

17 Local Government Act 2000 s 27(4).

18 Local Government Act 2000 s 27(5). As to copies of proposals for the operation of executive arrangements see PARA 312.

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C. REFERENDUMS

316. Referendum following petition.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision for or in connection with requiring a local authority² which receives a petition which complies with the provisions of the regulations to hold a referendum³, in such circumstances as may be prescribed in the regulations, on whether the authority should operate a relevant form of executive⁴. The provision which may be made by regulations includes provision⁵:

- 217 (1) as to the form and content of petitions, including provision for petitions in electronic form⁶;
- 218 (2) as to the minimum number of local government electors⁷ for a local authority's area who must support any petition presented to the authority during any period specified in the regulations⁸;
- 219 (3) for or in connection with requiring an officer⁹ of a local authority to publish the number of local government electors for the authority's area who must support any petition presented to the authority¹⁰;
- 220 (4) as to the way in which local government electors for a local authority's area are to support a petition, including provision enabling local government electors to support petitions by telephone or by electronic means¹¹;
- 221 (5) as to the action which may, may not or must be taken by a local authority in connection with any petition¹²;
- 222 (6) as to the manner in which a petition is to be presented to a local authority¹³;
- 223 (7) as to the verification of any petition¹⁴;
- 224 (8) as to the date on which, or the time by which, a referendum must be held¹⁵;
- 225 (9) as to the action which may, may not or must be taken by a local authority before or in connection with a referendum¹⁶;
- 226 (10) as to the action which may, may not or must be taken by a local authority after a referendum¹⁷; and

227 (11) for or in connection with enabling the Secretary of State or the Welsh Ministers, in the event of any failure by a local authority to take any action permitted or required by virtue of the regulations, to take that action¹⁸.

1 As to the Secretary of State or the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'local authority' see PARA 23.

3 As to referendums generally see **ELECTIONS AND REFERENDUMS**.

4 Local Government Act 2000 s 34(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 65(1), (2)). 'Relevant form of executive' means: (1) in relation to England, an executive which takes such form permitted by or under the Local Government Act 2000 s 11 as may be specified in the regulations; (2) in relation to Wales, executive arrangements involving a form of executive for which a referendum is required: s 34(1A) (added by the Local Government and Public Involvement in Health Act 2007 s 65(1), (3)). As to forms of executive for which a referendum is required see PARA 314. As to the regulations that have been made under the Local Government Act 2000 s 34 see the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, SI 2000/2852 (amended by SI 2001/760; SI 2001/1310; SI 2001/3915). For corresponding provision in relation to Wales see the Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001, SI 2001/2292 (amended by SI 2003/398). The Local Government Act 2000 Pt II (ss 10-48) has effect in relation to a predecessor council as if any regulations made under the Local Government Act 2000 s 34 did not apply to that council: Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 10. 'Predecessor council' means a local authority which, by or in consequence of an order under the Local Government and Public Involvement in Health Act 2007 s 7 (see PARA 61), will cease to exist on the date specified in that order as that on which a structural change comes into effect: Local Government (Structural Changes) (Transitional Arrangements) Regulations 2008, SI 2008/2113, reg 2.

5 Local Government Act 2000 s 34(2). The provision which may be made under s 34(2) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312), s 27 (see PARA 314), s 28 (see PARA 315), s 29 (see PARA 309), s 33 (see PARA 366), or ss 33A-33O (see PARAS 314, 336-341): s 34(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 65(1), (4)). However, nothing in the Local Government Act 2000 s 34(2) or s 34(3) affects the generality of the power under s 34(1) (see the text and notes 1-4): s 34(5).

6 Local Government Act 2000 s 34(2)(a).

7 The number of local government electors mentioned in the text is to be calculated at such times as may be provided by regulations under the Local Government Act 2000 s 34 and, unless such regulations otherwise provide, is to be 5% of the number of local government electors at each of those times: s 34(4). However, nothing in s 34(4) affects the generality of the power under s 34(1) (see the text and notes 1-4): s 34(5). As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by s 48(1).

8 Local Government Act 2000 s 34(2)(b).

9 As to officers see PARA 425 et seq.

10 Local Government Act 2000 s 34(2)(c).

11 Local Government Act 2000 s 34(2)(d).

12 Local Government Act 2000 s 34(2)(e).

13 Local Government Act 2000 s 34(2)(f).

14 Local Government Act 2000 s 34(2)(g).

15 Local Government Act 2000 s 34(2)(h).

16 Local Government Act 2000 s 34(2)(i).

17 Local Government Act 2000 s 34(2)(j).

18 Local Government Act 2000 s 34(2)(k).

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317. Referendum following direction.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision for or in connection with enabling him, in such circumstances as may be prescribed in the regulations, to direct a local authority² to hold a referendum³ on whether it should operate executive arrangements⁴ involving an executive which takes such permitted form⁵ as may be specified in the direction⁶. The provision which may be made by regulations includes provision⁷:

- 228 (1) as to the date on which, or the time by which, a referendum must be held⁸;
- 229 (2) as to the action which may, may not or must be taken by a local authority before or in connection with a referendum⁹;
- 230 (3) as to the action which may, may not or must be taken by a local authority after a referendum¹⁰; and
- 231 (4) for or in connection with enabling the Secretary of State or the Welsh Ministers, in the event of any failure by a local authority to take any action permitted or required by virtue of the regulations, to take that action¹¹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'local authority' see PARA 23.

3 As to referendums generally see **ELECTIONS AND REFERENDUMS**.

4 As to the meaning of 'executive arrangements' see PARA 303.

5 ie a form permitted by or under the Local Government Act 2000 s 11: see PARA 327.

6 Local Government Act 2000 s 35(1). As to the regulations that have been made under s 34 see the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, SI 2000/2852 (amended by SI 2001/760; SI 2001/1310; SI 2001/3915). For corresponding provision in relation to Wales see the Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001, SI 2001/2292 (amended by SI 2003/398).

7 Local Government Act 2000 s 35(2). The provision which may be made by virtue of s 35(2) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312), s 27 (see PARA 314), s 28 (see PARA 315), s 29 (see PARA 309), s 33 (see PARA 366), or ss 33A-33O (see PARAS 314, 336-341): s 35(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 65(1), (5)). However, nothing in the Local Government Act 2000 s 35(2) or s 35(3) affects the generality of the power under s 35(1) (see the text and notes 1-6): s 35(4).

8 Local Government Act 2000 s 35(2)(a).

9 Local Government Act 2000 s 35(2)(b).

10 Local Government Act 2000 s 35(2)(c).

11 Local Government Act 2000 s 35(2)(d).

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318. Referendum following order.

The Secretary of State or the Welsh Ministers¹ may by order make provision requiring every local authority², or every local authority falling within any description of authority specified in the order, to hold a referendum³ on whether it should operate executive arrangements⁴ involving an executive which takes such permitted form⁵ as may be specified in the order⁶. The provision which may be made by an order includes provision⁷:

- 232 (1) as to the date on which, or the time by which, a referendum must be held⁸;
- 233 (2) as to the action which may, may not or must be taken by a local authority before or in connection with a referendum⁹;
- 234 (3) as to the action which may, may not or must be taken by a local authority after a referendum¹⁰;
- 235 (4) for or in connection with enabling the Secretary of State, in the event of any failure by a local authority to take any action permitted or required by virtue of the order, to take that action¹¹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'local authority' see PARA 23.

3 As to referendums generally see **ELECTIONS AND REFERENDUMS**.

4 As to the meaning of 'executive arrangements' see PARA 303.

5 I.e. a form permitted by or under the Local Government Act 2000 s 11: see PARA 327.

6 Local Government Act 2000 s 36(1). At the date at which this volume states the law no orders had been made under s 36.

7 Local Government Act 2000 s 36(2). The provision which may be made by virtue of s 36(2) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312), s 27 (see PARA 314), s 28 (see PARA 315), s 29 (see PARA 309), s 33 (see PARA 366), or ss 33A-33O (see PARA 314, 336-341): s 36(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 65(1), (6)). However, nothing in s 36(2) or s 36(3) affects the generality of the power under s 36(1) (see the text and notes 1-6): s 36(4).

8 Local Government Act 2000 s 36(2)(a).

9 Local Government Act 2000 s 36(2)(b).

10 Local Government Act 2000 s 36(2)(c).

11 Local Government Act 2000 s 36(2)(d).

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319. Provisions with respect to referendums.

A local authority¹ in England may not hold more than one referendum² in any period of ten years³ and in Wales a local authority may not hold more than one referendum⁴ in any period of five years⁵.

The persons entitled to vote in a referendum held by a local authority are those who on the day of the referendum:

- 236 (1) would be entitled to vote as electors at an election of councillors⁶ for an electoral area⁷ which is situated within the authority's area⁸; and
- 237 (2) are registered in the register of local government electors⁹ at an address within the authority's area¹⁰.

The Secretary of State or Welsh Ministers¹¹ may by regulations make provision as to the conduct of referendums¹², and for the combination of polls at referendums with polls at any elections¹³.

1 As to the meaning of 'local authority' see PARA 23.

2 Is a referendum held under the Local Government Act 2000 s 27 (see PARAS 314-315) or s 33K (see PARA 340) or by virtue of regulations or an order made under any provision of Pt II (ss 10-48): s 45(9) (amended by the Local Government and Public Involvement in Health Act 2007 s 69(1), (3)). As to referendums generally see **ELECTIONS AND REFERENDUMS**.

3 Local Government Act 2000 s 45(1)(a) (substituted by the Local Government and Public Involvement in Health Act 2007 s 69(1), (2)).

4 See note 2.

5 Local Government Act 2000 s 45(1)(b) (as substituted: see note 2).

6 As to entitlement to vote at local government elections see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 112. See also PARA 321.

7 As to the meaning of 'electoral area' see the Representation of the People Act 1983 s 203(1) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 10); definition applied by the Local Government Act 2000 s 48(1).

8 Local Government Act 2000 s 45(4)(a).

9 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by the Local Government Act 2000 s 48(1). As to the register of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 160 et seq.

10 Local Government Act 2000 s 45(4)(b).

11 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

12 Local Government Act 2000 s 45(5). Regulations under s 45(5) may apply or incorporate, with or without modifications or exceptions, any provision of any enactment, whenever passed or made, relating to elections or referendums: s 45(7). The provision which may be made under s 45(5) includes, in particular, provision: (1) as to the question to be asked in a referendum; (2) as to the publicity to be given in connection with a referendum, including the publicity to be given with respect to the consequences of the referendum; (3) about the limitation of expenditure in connection with a referendum, and the creation of criminal offences in connection with the limitation of such expenditure; (4) as to the conduct of the authority, members of the authority and officers of the authority in relation to a referendum; (5) as to when, where and how voting in a referendum is to take place; (6) as to how the votes cast in a referendum are to be counted; and (7) for disregarding alterations in a register of electors: s 45(8). As to the meaning of 'enactment' see PARA 304 note 3. As to officers see PARA 425 et seq. As to regulations made under s 45 see the Representation of the People (England and Wales) (Amendment) Regulations 2006, SI 2006/752; Representation of the People (England and Wales) (Amendment) (No 2) Regulations 2006, SI 2006/2910; Local Authorities (Conduct of Referendums) (England) Regulations 2007, SI 2007/2089; Local Authorities (Conduct of Referendums) (Wales) Regulations 2008, SI 2008/1848.

13 Local Government Act 2000 s 45(6). Regulations under s 45(6) may apply or incorporate, with or without modifications or exceptions, any provision of any enactment, whenever passed or made, relating to elections or referendums: s 45(7). As to regulations made under s 45(6) see the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004, SI 2004/294 (as amended by SI 2006/3278; SI 2007/1025).

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D. ELECTIONS

320. Power to make provision about elections.

The Secretary of State¹ may by regulations make provision as to²:

- 238 (1) the conduct of elections³ for the return of elected mayors⁴ or elected executive members⁵; and
- 239 (2) the questioning of elections for the return of elected mayors or elected executive members and the consequences of irregularities⁶.

The provision which may be made under head (1) above includes, in particular, provision:

- 240 (a) about the registration of electors⁷;
- 241 (b) for disregarding alterations in a register of electors⁸;
- 242 (c) about the limitation of election expenses, and the creation of criminal offences in connection with the limitation of such expenses⁹;
- 243 (d) for the combination of polls at elections for the return of elected mayors and other elections, including elections for the return of elected executive members¹⁰; and
- 244 (e) for the combination of polls at elections for the return of elected executive members and other elections, including elections for the return of elected mayors¹¹.

Regulations under these provisions may: (i) apply or incorporate, with or without modifications or exceptions, any provision of, or made under, the Representation of the People Acts¹² or any provision of any other enactment¹³ relating to parliamentary elections¹⁴ or local government elections¹⁵; (ii) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for the return of elected mayors or elected executive members¹⁶; and (iii) so far as may be necessary in consequence of any provision made by or under Part II of the Local Government Act 2000¹⁷ or any regulations under these provisions, amend any provision of any enactment relating to the registration of parliamentary electors or local government electors¹⁸.

The Secretary of State may by regulations make provision¹⁹: (A) as to the dates on which and years in which elections for the return of elected mayors or elected executive members may or must take place²⁰; (B) as to the intervals between elections for the return of elected mayors or elected executive members²¹; (C) as to the term of office of elected mayors or elected executive members²²; and (D) as to the filling of vacancies in the office of elected mayor or elected executive member²³.

1 As to the Secretary of State see PARA 96. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the Welsh Ministers see PARA 97. However, this does not apply in the case of s 44: see the Local Government Act 2000 s 106(1)(a).

2 Local Government Act 2000 s 44(1). Before making any regulations under s 44, the Secretary of State must consult the Electoral Commission: s 44(3A) (s 44(3A), (3B) added by the Political Parties, Elections and Referendums Act 2000 s 158(1), Sch 21 para 18(1), (2)). For regulations made under the Local Government Act 2000 s 45 see now the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004, SI 2004/294 (amended by SI 2006/3278; SI 2007/1025); the Representation of the People (England and

Wales) (Amendment) Regulations 2006, SI 2006/752; the Representation of the People (England and Wales) (Amendment) (No 2) Regulations 2006, SI 2006/2910; the Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2006, SI 2006/3278; the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007, SI 2007/1024; and the Representation of the People (England and Wales) and the Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2007, SI 2007/1025.

3 As to elections generally see **ELECTIONS AND REFERENDUMS**.

4 'Elected mayor', in relation to a local authority, means an individual elected as mayor of the authority by the local government electors for the authority's area in accordance with the provisions made by or under the Local Government Act 2000 Pt II: s 39(1). An elected mayor of a local authority in England is to be entitled to the style of 'mayor', and an elected mayor of a local authority in Wales is to be entitled to the style of 'mayor' or 'maer': s 39(2), (3). As to the meaning of 'local authority' see PARA 23. As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by s 48(1).

5 Local Government Act 2000 s 44(1)(a). 'Elected executive member' means an individual elected as a member of a local authority executive by the local government electors for the authority's area in accordance with the provisions made by or under Pt II, but does not include an elected mayor: s 39(4). As to local authority executives see PARA 327.

6 Local Government Act 2000 s 44(1)(b). No return of an elected mayor or elected executive member at an election is to be questioned except by an election petition under the provisions of the Representation of the People Act 1983 Pt III (ss 120-186) (see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 759 et seq) as applied by or incorporated in regulations under the Local Government Act 2000 s 44: s 44(4).

7 Local Government Act 2000 s 44(2)(a).

8 Local Government Act 2000 s 44(2)(b).

9 Local Government Act 2000 s 44(2)(c). The power of the Secretary of State to make regulations under s 44 so far as relating to matters mentioned in s 44(2)(c) is exercisable only on, and in accordance with, a recommendation of the Electoral Commission, except where the Secretary of State considers that it is expedient to exercise that power in consequence of changes of value of money: s 44(3B) (as added: see note 2).

10 Local Government Act 2000 s 44(2)(d).

11 Local Government Act 2000 s 44(2)(e).

12 As to the Representation of the People Acts see **ELECTIONS AND REFERENDUMS**.

13 'Enactment' includes enactments contained in a local act or comprised in subordinate legislation: Local Government Act 2000 s 48(1).

14 As to parliamentary elections see **ELECTIONS AND REFERENDUMS**.

15 Local Government Act 2000 s 44(3)(a). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS**.

16 Local Government Act 2000 s 44(3)(b).

17 Ie the Local Government Act 2000 ss 10-48.

18 Local Government Act 2000 s 44(3)(c). As to the registration of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 127 et seq.

19 Local Government Act 2000 s 41. For regulations made under s 41 see the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001, SI 2001/2544.

20 Local Government Act 2000 s 41(a).

21 Local Government Act 2000 s 41(b).

22 Local Government Act 2000 s 41(c). As to term of office see PARA 322.

23 Local Government Act 2000 s 41(d).

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321. Voting.

The persons entitled to vote as electors at an election¹ for the return of an elected mayor² or elected executive member³ are those who on the day of the poll:

- 245 (1) would be entitled to vote as electors at an election of councillors⁴ for an electoral area which is situated within the area of the local authority concerned⁵; and
- 246 (2) are registered in the register of local government electors⁶ at an address within the authority's area⁷.

Each person entitled to vote as an elector at an election for the return of an elected mayor is to have the following vote or votes:

- 247 (a) one vote (the 'first preference vote') which may be given for the voter's first preference from among the candidates to be the elected mayor⁸; and
- 248 (b) if there are three or more candidates to be the elected mayor, one vote (the 'second preference vote') which may be given for the voter's second preference from among those candidates⁹.

A person is not entitled as an elector to cast more than one first preference vote, or more than one second preference vote, at an election for the return of an elected mayor¹⁰.

The elected mayor is to be returned under the simple majority system, unless there are three or more candidates¹¹, in which case the elected mayor is to be returned under the supplementary vote system¹².

1 As to elections generally see **ELECTIONS AND REFERENDUMS**.

2 As to the meaning of 'elected mayor' see PARA 320 note 4.

3 As to the meaning of 'elected executive member' see PARA 320 note 5.

4 As to the election of councillors see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 204 et seq.

5 Local Government Act 2000 s 43(1)(a). As to the meaning of 'electoral area' see the Representation of the People Act 1983 s 203(1) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 10); definition applied by the Local Government Act 2000 s 48(1). As to the meaning of 'local authority' see PARA 23.

6 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by the Local Government Act 2000 s 48(1).

7 Local Government Act 2000 s 43(1)(b).

8 Local Government Act 2000 s 42(1)(a).

9 Local Government Act 2000 s 42(1)(b).

10 Local Government Act 2000 s 43(2).

11 See the Local Government Act 2000 s 42(2); and PARA 322.

12 See the Local Government Act 2000 s 42(3); and PARA 322. As to the supplementary vote system see Sch 2; and PARA 322.

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322. Election of elected mayors.

The elected mayor¹ is to be returned under the simple majority system, unless there are three or more candidates². Where there are three or more candidates to be the elected mayor, the elected mayor is to be returned under the supplementary vote system³.

Where there are three or more candidates to be an elected mayor of a local authority⁴ and one of the candidates to be the elected mayor receives more than half of all the first preference votes⁵ given in the election that candidate is to be returned as the elected mayor⁶.

Where there are three or more candidates to be an elected mayor⁷ and none of the candidates to be the elected mayor receives more than half of all the first preference votes given in the election⁸, then the two candidates who received the greatest number of first preference votes given in the election remain in the contest⁹. Where, by reason of an equality of first preference votes, three or more candidates are qualified to remain in the contest¹⁰, all of them remain in the contest¹¹. The other candidates are eliminated from the contest¹². The number of second preference votes¹³ given in the election for each of the candidates remaining in the contest by voters who did not give their first preference vote to any of those candidates is to be ascertained¹⁴. That number is to be added to the number of first preference votes given for that candidate, to give his total number of preference votes¹⁵. The person who is to be returned as the elected mayor is that one of the candidates remaining in the contest who has the greatest total number of preference votes¹⁶. Where, by reason of an equality of total number of preference votes, two or more candidates remaining in the contest each have the greatest total number of preference votes, the returning officer¹⁷ is to decide by lots which of them is to be returned as the elected mayor¹⁸.

Elections for the return of an elected mayor of a local authority in England are to take place on the ordinary day of election¹⁹ in each of the relevant years²⁰. The term of office of an elected mayor or elected executive member²¹ is generally to be four years²².

1 As to the meaning of 'elected mayor' see PARA 320 note 4.

2 Local Government Act 2000 s 42(2).

3 Local Government Act 2000 s 42(3). Section 42(3) provides that the elected mayor is to be returned under the supplementary vote system in accordance with Sch 2: see the text and notes 4-18.

4 See the Local Government Act 2000 Sch 2 para 1. As to the meaning of 'local authority' see PARA 23.

5 As to the meaning of 'first preference vote' see PARA 321.

6 Local Government Act 2000 Sch 2 para 2.

7 See the Local Government Act 2000 Sch 2 para 1.

8 Local Government Act 2000 Sch 2 para 3(1).

9 Local Government Act 2000 Sch 2 para 3(2).

- 10 le by virtue of the Local Government Act 2000 Sch 2 para 3(2): see the text to note 9.
- 11 Local Government Act 2000 Sch 2 para 3(3).
- 12 Local Government Act 2000 Sch 2 para 3(4).
- 13 As to the meaning of 'second preference vote' see PARA 321.
- 14 Local Government Act 2000 Sch 2 para 3(5).
- 15 Local Government Act 2000 Sch 2 para 3(6).
- 16 Local Government Act 2000 Sch 2 para 3(7).
- 17 As to returning officers see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 359.
- 18 Local Government Act 2000 Sch 2 para 3(8).
- 19 As to ordinary day of local government election see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 213.
- 20 Local Government Act 2000 s 39(6) (s 39(6) substituted and s 39(7), (8) added by the Local Government and Public Involvement in Health Act 2007 s 66(1), (3)).
- 21 As to the meaning of 'elected executive member' see PARA 320 note 5.
- 22 Local Government Act 2000 s 39(7) (as added: see note 20). This provision is subject to regulations under s 41 (see PARA 320): s 39(8) (as so added).

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323. Elected mayor, councillors etc.

Where the person who is returned at an election¹ as the elected mayor² of a local authority³ is also returned at an election held at the same time as a councillor of the authority, a vacancy arises in the office of councillor⁴. A vacancy also arises in the office of councillor where the person who is returned at an election (the 'mayoral election') as the elected mayor of a local authority:

- 249 (1) is a councillor of the authority⁵; and
- 250 (2) was returned as such a councillor at an election held at an earlier time than the mayoral election⁶.

A person who is the elected mayor of a local authority may not be a candidate in an election for the return of a councillor or councillors of the authority⁷. However, a person who is the elected mayor of a local authority may be a candidate in an election for the return of a councillor or councillors of the authority if the election is held at the same time as an election for the return of the elected mayor of the authority⁸.

A reference in any enactment⁹, whenever passed or made, to a member of a local authority or a councillor of a local authority, does not include a reference to an elected mayor of the authority¹⁰.

- 1 As to elections generally see **ELECTIONS AND REFERENDUMS**.
- 2 As to the meaning of 'elected mayor' see PARA 320 note 4.

- 3 As to the meaning of 'local authority' see PARA 23.
- 4 Local Government Act 2000 s 40(1).
- 5 Local Government Act 2000 s 40(2)(a).
- 6 Local Government Act 2000 s 40(2)(b).
- 7 Local Government Act 2000 s 40(3).
- 8 Local Government Act 2000 s 40(4). If a person is a candidate in both such elections and he is returned both as the elected mayor and as a councillor, s 40(1) (see the text and notes 1-4) is to apply: see s 40(4).
- 9 As to the meaning of 'enactment' see PARA 304 note 3.
- 10 Local Government Act 2000 s 39(5A) (s 39(5A)-(5C) added by the Local Government and Public Involvement in Health Act 2007 s 66(1), (2)). The Local Government Act 2000 s 39(5A) is subject to:

569 (1) regulations made by the Secretary of State or the Welsh Ministers under s 39(5B) which provide that an elected mayor is to be treated as member or councillor of a local authority for the purposes of an enactment (whenever passed or made) (s 39(5B)(a) (as so added)); and

570 (2) any other contrary intention that appears in any enactment (whenever passed or made) (s 39(5B)(b) (as so added)).

The Local Government Act 1972 ss 2(2A) (see PARA 24), 21(1A) (see PARA 37) and Sch 2 para 5C (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35) are not taken to indicate any contrary intention for the purposes of head (2) above: Local Government Act 2000 s 39(5C) (as so added).

As to the Secretary of State and the Welsh Ministers see PARAS 96-97. An elected mayor of a local authority is to be treated as a councillor of the local authority for the purposes of the following enactments:

571 (a) the Coroners Act 1988 s 2(2), (3) (see **CORONERS** vol 9(2) (2006 Reissue) PARA 914) (Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 2(a));

572 (b) the Local Government and Housing Act 1989 s 18(1), (3)-(5) (see PARAS 166-167) (Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 2(b));

573 (c) the Environment Act 1995 Sch 7 para 2(6) (Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 2(c));

574 (d) the Local Authorities (Members' Interests) Regulations 1992, SI 1992/618, reg 2 (see PARA 291) (Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 2(d));

575 (e) the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, Sch 6, para 2 (Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 2(e)).

An elected mayor of a local authority is to be treated as a member of the local authority for the purposes of:

576 (i) the Local Government Act 1985 s 28(3) (see PARA 49) (Local Authorities (Elected Mayors) (England) Regulations 2008, SI 2008/3112, reg 2(a));

577 (ii) as respects a joint authority which is an Integrated Transport Authority, the Local Government Act 1985 ss 29(1), 31(1), 32(1), (3), (4), (7) and Sch 10 (Local Authorities (Elected Mayors) (England) Regulations 2008, SI 2008/3112, reg 2(b));

578 (iii) the Local Government Act 2000 s 101(1), (3)-(5) (see PARA 228) (Local Authorities (Elected Mayors) (England) Regulations 2004, SI 2004/1815, reg 2);

579 (iv) the Children Act 2004 s 19(1) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 190) (Local Authorities (Elected Mayors) (England) Regulations 2005, SI 2005/2121, reg 2);

580 (v) the Local Transport Act 2008 ss 79(2)(b), (c), 85(1)(b), (c) (Local Authorities (Elected Mayors) (England) Regulations 2008, SI 2008/3112, reg 2(c)).

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(iii) Allocation of Functions between the Authority and the Executive

A. INTRODUCTION

324. Introduction.

The question as to which functions¹ of a local authority are to be the responsibility of an executive of the authority under executive arrangements² is to be determined under the Local Government Act 2000³.

Any functions conferred on a local authority by virtue of the Local Government Act 2000 Part II⁴ are not to be the responsibility of an executive of the authority under executive arrangements⁵.

The Secretary of State or the Welsh Ministers⁶ may by regulations make provision for any function of a local authority specified in the regulations⁷: (1) to be a function which is not to be the responsibility of an executive of the authority under executive arrangements⁸; (2) to be a function which may be the responsibility of such an executive under such arrangements⁹; or (3) to be a function which to the extent provided by the regulations is to be the responsibility of such an executive under such arrangements, and to the extent provided by the regulations is not to be the responsibility of such an executive under such arrangements¹⁰.

Executive arrangements must make provision for any function of a local authority falling within head (2) above: (a) to be a function which is the responsibility of an executive of the authority¹¹; (b) to be a function which is not the responsibility of such an executive¹²; or (c) to be a function which to the extent provided by the arrangements is the responsibility of such an executive, and to the extent provided by the arrangements is not the responsibility of such an executive¹³.

1 For the purposes of the Local Government Act 2000 s 13, 'function' means a function of any nature, whether conferred or otherwise arising before, on or after the passing of the Local Government Act 2000: s 13(14). Any reference to any functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements is a reference to the functions of the authority to the extent to which they are or, as the case may be, are not, by virtue of s 13, the responsibility of the executive under such arrangements: s 13(8).

2 As to executive arrangements see PARA 303 et seq.

3 Local Government Act 2000 s 13(1).

4 Ie the Local Government Act 2000 ss 10-48.

5 Local Government Act 2000 s 48(6).

6 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

7 For the purposes of the Local Government Act 2000 s 13, any reference to a function specified in regulations includes a reference to a function of a description specified in regulations: s 13(13). As to the regulations that have been made under s 13 see the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853 (amended by SI 2001/2212; SI 2001/2831; SI 2002/1916; SI 2004/1158; SI

2004/2211; SI 2004/2748; SI 2004/3168; SI 2005/714; SI 2006/886; SI 2005/929; SI 2006/886; SI 2006/1177; 2007/806; SI 2007/1284; SI 2007/1557; SI 2007/1950; SI 2007/2593; SI 2008/516; SI 2008/744; SI 2008/1430; SI 2008/2787; the Accounts and Audit (Wales) Regulations 2005, SI 2005/368 (amended by SI 2007/388; SI 2008/912); and the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007, SI 2007/399 (amended by SI 2008/1430).

8 Local Government Act 2000 s 13(3)(a).

9 Local Government Act 2000 s 13(3)(b). For these purposes, any reference to the 'discharge of any functions' includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions: s 48(4). For the purposes of s 13, 'action' in relation to any function includes any action, of whatever nature and whether or not separately identified by any enactment, involving: (1) the taking of any step in the course of, or otherwise for the purposes of or in connection with, the discharge of the function; (2) the doing of anything incidental or conducive to the discharge of the function; or (3) the doing of anything expedient in connection with the discharge of the function or any action falling within head (1) or head (2): s 13(14).

10 Local Government Act 2000 s 13(3)(c). The power under s 13(3)(c) includes power in relation to any function of a local authority: (1) to designate any action in connection with the discharge of that function which is to be the responsibility of an executive of a local authority; and (2) to designate any action in connection with the discharge of that function which is not to be the responsibility of such an executive: s 13(5).

11 Local Government Act 2000 s 13(4)(a).

12 Local Government Act 2000 s 13(4)(b).

13 Local Government Act 2000 s 13(4)(c). This power under s 13(4)(c) includes power in relation to any function of a local authority: (1) to designate any action in connection with the discharge of that function which is to be the responsibility of an executive of a local authority; and (2) to designate any action in connection with the discharge of that function which is not to be the responsibility of such an executive: s 13(5).

UPDATE

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NOTE 7--SI 2007/399 further amended: SI 2009/2983. SI 2005/368 further amended: SI 2010/683.

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B. FUNCTIONS WHICH ARE TO BE THE RESPONSIBILITY OF AN EXECUTIVE

325. Functions which are the responsibility of an executive.

Subject to any provision made by the Local Government Act 2000 or by any enactment which is passed or made after 28 July 2000, any function¹ of a local authority which is not specified in regulations² is to be the responsibility of an executive of the authority under executive arrangements³.

The Secretary of State or the Welsh Ministers⁴ may by regulations specify cases or circumstances in which any function of a local authority which would otherwise⁵ be the responsibility of an executive of the authority to any extent is not to be the responsibility of such an executive to that or any particular extent⁶.

A function of a local authority may, by virtue of the Local Government Act 2000⁷, be the responsibility of an executive of the authority to any extent notwithstanding that the provisions of the Local Government Act 1972 relating to the discharge of functions⁸ do not apply to that function⁹.

Any function which is the responsibility of an executive of a local authority under executive arrangements is to be regarded as exercisable by the executive on behalf of the authority¹⁰ and may be discharged only in accordance with provisions¹¹ which apply to the discharge of any such function by that form of executive¹².

1 As to the meaning of 'function' see PARA 324 note 1.

2 Ie under the Local Government Act 2000 s 13(3): see PARA 324.

3 Local Government Act 2000 s 13(2). As to executive arrangements see PARA 303 et seq.

4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 Ie by virtue of the Local Government Act 2000 s 13(1)-(5): see PARA 324.

6 Local Government Act 2000 s 13(6).

7 Ie by virtue of the Local Government Act 2000 s 13.

8 Ie the Local Government Act 1972 s 101: see PARA 370. As to the meaning of 'discharge of any functions' see PARA 324 note 9.

9 Local Government Act 2000 s 13(7).

10 Local Government Act 2000 s 13(9)(a).

11 Ie any provisions made by or under the Local Government Act 2000 Pt II (ss 10-48) or the Local Government and Public Involvement in Health Act 2007 s 236 (see PARA 378).

12 Local Government Act 2000 s 13(9)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 236(9)). Accordingly any function which is the responsibility of an executive of a local authority under executive arrangements: (1) may not be discharged by the authority; (2) is not a function to which the Local Government Act 1972 s 101(1) (see PARA 370) applies; and (3) may be the subject of arrangements made under s 101(5) (see PARA 370) only if permitted by any provision made under the Local Government Act 2000 s 20 (see PARA 362): s 13(10).

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C. FUNCTIONS WHICH ARE NOT TO BE THE RESPONSIBILITY OF AN EXECUTIVE

326. Functions which are not to be the responsibility of an executive.

Any function¹ which, under executive arrangements², is not the responsibility of an executive of a local authority is to be discharged in any way which would be permitted or required apart from the provisions made by or under Part II of the Local Government Act 2000³. However, the Secretary of State or the Welsh Ministers⁴ may by regulations make provision with respect to the discharge of any function which, under executive arrangements, is not the responsibility of an executive of a local authority⁵.

- 1 As to the meaning of 'function' see PARA 324 note 1.
- 2 As to executive arrangements see PARA 303 et seq.
- 3 Local Government Act 2000 s 13(11).
- 4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 5 Local Government Act 2000 s 13(12). The provisions that may be made may include the disapplication of the Local Government Act 1972 s 101 (see PARA 370) or any provision of it: see the Local Government Act 2000 s 13(12).

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(2) EXECUTIVE ARRANGEMENTS

(i) Forms of Executive

A. OVERVIEW

327. Forms of local authority executive.

The executive of a local authority¹ must take a form specified that is applicable to the authority². In the case of any local authority in England or Wales, the executive may be a 'mayor and cabinet executive' consisting of an elected mayor of the authority³ and two or more councillors of the authority appointed to the executive by the elected mayor⁴. In the case of any local authority in England, the executive may be a 'leader and cabinet executive (England)' consisting of a councillor of the authority (the 'executive leader') elected as leader of the executive by the authority⁵ and two or more councillors of the authority appointed to the executive by the executive leader⁶. In the case of any local authority in Wales, the executive may be:

- 251 (1) a 'leader and cabinet executive (Wales)' consisting of a councillor of the authority (the 'executive leader') elected as leader of the executive by the authority and two or more councillors of the authority appointed to the executive by either the executive leader or the authority⁷;
- 252 (2) a 'mayor and council manager executive' consisting of an elected mayor of the authority and an officer of the authority (the 'council manager') appointed to the executive by the authority⁸.

In the case of any local authority in England or Wales the executive may take any such form as may be prescribed in regulations by the Secretary of State or the Welsh Ministers⁹.

If, before 30 December 2007¹⁰, an authority in England was operating an old-style leader and cabinet executive¹¹ or a mayor and council manager executive it is not prevented from operating as such¹². However the local authority is required to make a change in governance arrangements¹³ and draw up and adopt executive arrangements making certain provisions¹⁴.

Neither a local authority executive¹⁵ nor a committee of a local authority executive¹⁶ is to be regarded as a body to which the duty to allocate seats to political groups¹⁷ applies¹⁸.

1 As to the meaning of 'local authority' see PARA 23. A local authority executive may not include the chairman or vice-chairman of the authority: Local Government Act 2000 s 11(7). For the purposes of the Local Government Act 2000 Pt II (ss 10-48), any reference to the chairman of a local authority: (1) is a reference to that person whether or not he is entitled to another style; and (2) in the case of a London borough, is a reference to the person who (disregarding the Local Government Act 1972 s 8, Sch 2 paras 5B-5I) is referred to in Sch 2 Pt I as the mayor of the borough (see **LONDON GOVERNMENT**): Local Government Act 2000 s 48(2). As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**. For the purposes of the Local Government Act 2000 Pt II, any reference to the vice-chairman of a local authority: (a) is a reference to that person whether or not he is entitled to another style; and (b) in the case of a London borough, is a reference to the person who (disregarding the Local Government Act 1972 s 8, Sch 2 paras 5B-5I) is referred to in Sch 2 Pt I as the deputy mayor (see **LONDON GOVERNMENT**): Local Government Act 2000 s 48(3).

2 Local Government Act 2000 s 11(1) (substituted by the Local Government and Public Involvement in Health Act 2007 s 62(1), (2)).

3 Local Government Act 2000 s 11(2)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 62(1), (3)). As to the meaning of 'elected mayor' see PARA 320 note 4. As to the discharge of functions by a mayor and cabinet executive see PARA 357. The number of members of a mayor and cabinet executive may not exceed 10: see the Local Government Act 2000 s 11(8). The Secretary of State and the Welsh Ministers may by regulations specify a different number of members of an executive to which s 11(8) applies, but this power may not be exercised in relation to Wales so as to provide for a maximum number which exceeds ten: see s 11(9) (amended by the Local Government and Public Involvement in Health Act 2007 s 62(1), (8)). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 Local Government Act 2000 s 11(2)(b) (as amended: see note 4).

5 Local Government Act 2000 s 11(2A)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 62(1), (4)).

6 Local Government Act 2000 s 11(2A)(b) (as added: see note 6).

7 Local Government Act 2000 s 11(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 62(1), (5)).

8 Local Government Act 2000 s 11(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 62(1), (6)).

9 Local Government Act 2000 s 11(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 62(1), (7)). Such regulations may, in particular, provide for:

581 (1) a form of executive some or all of the members of which are elected by the local government electors for the authority's area to a specified post in the executive associated with the discharge of particular functions (Local Government Act 2000 s 11(6)(a));

582 (2) a form of executive some or all of the members of which are elected by those electors but not to any such post (s 11(6)(b));

583 (3) the system of voting that will be used for elections under head (1) or (2) above (s 11(6)(c)).

10 Ie the date on which the amendments made to the Local Government Act 2000 s 11 by the Local Government and Public Involvement in Health Act 2007 came into force.

11 'Old-style leader and cabinet executive' means a leader and cabinet executive of the form specified in the Local Government Act 2000 s 11(3): Local Government and Public Involvement in Health Act 2007 Sch 4 para 5(1).

12 See the Local Government and Public Involvement in Health Act 2007 Sch 4 paras 1, 2, 6, 7.

13 Ie a change in governance arrangements of the kind set out in the Local Government Act 2000 s 33A (see PARA 336). Such arrangements must be made by certain dates: see the Local Government and Public Involvement in Health Act 2007 Sch 4 paras 4, 11.

14 See the Local Government and Public Involvement in Health Act 2007 Sch 4 paras 3, 4, 7-10. See also the Local Government Act 2000 s 33G; and PARA 338.

- 15 Local Government Act 2000 s 24(1)(a).
- 16 Local Government Act 2000 s 24(1)(b).
- 17 le under the Local Government and Housing Act 1989 s 15: see PARA 375.
- 18 Local Government Act 2000 s 24.

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B. ELECTED MAYOR AND CABINET

328. Mayor and cabinet executives.

In relation to executive arrangements¹ by a local authority² which provide for a mayor and cabinet executive³, the executive arrangements must include provision which enables the elected mayor⁴ to determine the number of councillors who may be appointed⁵ to the executive⁶.

The executive arrangements must also include provision which requires the elected mayor to appoint one of the members of the executive to be his deputy (the 'deputy mayor')⁷. In the case of a local authority in Wales, the deputy mayor is entitled to the style of 'dirprwy faer'⁸. The deputy mayor, unless he resigns as deputy mayor or ceases to be a member of the authority, is to hold office until the end of the term of office of the elected mayor⁹. However, the elected mayor may, if he thinks fit, remove the deputy mayor from office¹⁰. Where a vacancy occurs in the office of deputy mayor, the elected mayor must appoint another person in his place¹¹.

Where for any reason the elected mayor is unable to act or the office of elected mayor is vacant, the deputy mayor must act in his place¹². The executive must act in the elected mayor's place or must arrange for a member of the executive to act in his place, if for any reason: (1) the elected mayor is unable to act or the office of elected mayor is vacant¹³; and (2) the deputy mayor is unable to act or the office of deputy mayor is vacant¹⁴.

The Secretary of State or the Welsh Ministers¹⁵ may by regulations make provision for or in connection with the appointment of a person (an 'assistant') to provide assistance to an elected mayor¹⁶.

- 1 As to the meaning of 'executive arrangements' see PARA 303.
- 2 As to the meaning of 'local authority' see PARA 23.
- 3 As to mayor and cabinet executives see also PARA 327.
- 4 As to the meaning of 'elected mayor' see PARA 320 note 4.
- 5 le under the Local Government Act 2000 s 11(2)(b): see PARA 327.
- 6 Local Government Act 2000 Sch 1 para 1(1), (2). This provision is subject to s 11(8): see PARA 327.
- 7 Local Government Act 2000 Sch 1 para 1(3).
- 8 Local Government Act 2000 Sch 1 para 1(9).
- 9 Local Government Act 2000 Sch 1 para 1(4).

- 10 Local Government Act 2000 Sch 1 para 1(5).
- 11 Local Government Act 2000 Sch 1 para 1(6).
- 12 Local Government Act 2000 Sch 1 para 1(7).
- 13 See the Local Government Act 2000 Sch 1 para 1(8)(a).
- 14 See the Local Government Act 2000 Sch 1 para 1(8)(b). As to membership of the executive, tenure of and removal from office, and the appointment of an interim mayor and executive where the offices are vacant or the office holders are unable to act, see the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 46, 47, and the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 40, 41.
- 15 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 16 Local Government Act 2000 Sch 1 para 6(1). Such regulations may include provision with respect to the terms and conditions of appointment of an assistant: Sch 1 para 6(2). However, nothing in Sch 1 para 6(2) affects the generality of the power under Sch 1 para 6(1): Sch 1 para 6(3). As to such regulations see PARA 329.

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329. Appointment of elected mayor's assistant.

An elected mayor of a local authority may appoint not more than one person (an 'assistant') to provide assistance to him¹. Any appointment of an assistant is an appointment as an employee of the authority². No appointment of an assistant must be such as to extend beyond the term of office for which the elected mayor was elected or, where the elected mayor ceases to be the elected mayor before the end of the term of office for which he was elected, the date on which he ceases to hold that office³.

An assistant must be employed on such terms and conditions (including conditions as to remuneration) as the elected mayor thinks fit, within the financial resources available to the authority⁴. Where the elected mayor appoints an assistant, he must report to the authority in writing the name of the assistant and the terms and conditions on which the assistant has been appointed⁵.

1 Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(1). An assistant is to be regarded for the purposes of the Local Government and Housing Act 1989 Pt I (ss 1-21) (political restriction of officers and staff) as holding a politically restricted post under the local authority: Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(6).

2 Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(2).

3 Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(3).

4 Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(4). However, subject to reg 3(8), the Local Government and Housing Act 1989 s 9(1), (3), (4), (8), (8A), (8B), (9) (assistants for political groups: see PARA 432), and any order made under s 9(4a) must apply in relation to the appointment of an assistant as if any appointment to that post were the appointment of a person in pursuance of s 9: Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(7). The Local Government and Housing Act 1989 s 9(3) applies in relation to the appointment of an assistant as if the words from and including 'and that the appointment terminates' to the end were omitted: Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(8).

5 Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3(5).

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C. LEADER AND CABINET

330. Old-style leader and cabinet executives.

If, before 30 December 2007¹, a local authority² was operating a leader and cabinet executive³ it is not prevented from continuing to operate as such⁴. In relation to such executive arrangements⁵ by a local authority which provide for a leader and cabinet executive⁶, the executive arrangements may include provision with respect to the election and term of office of the executive leader⁷, and the appointment and term of office of members of the executive appointed⁸ by the authority⁹.

The executive arrangements must include provision¹⁰ which either:

- 253 (1) enables the authority to determine the number of councillors who may be appointed to the executive¹¹; or
- 254 (2) enables the executive leader to determine the number of councillors who may be so appointed¹².

1 The date on which the amendments made to the Local Government Act 2000 s 11 by the Local Government and Public Involvement in Health Act 2007 came into force. As to s 11 as amended see PARA 327.

2 As to the meaning of 'local authority' see PARA 23.

3 The Local Government Act 2000 s 11(3)(b)(ii): see PARA 327. As to membership of the executive, tenure of and removal from office, and the appointment of an interim mayor and executive where the offices are vacant or the office holders are unable to act, see PARA 328 note 14.

4 See PARA 327.

5 As to the meaning of 'executive arrangements' see PARA 303.

6 Local Government Act 2000 Sch 1 para 2(1). As to leader and cabinet executives see also PARA 327.

7 Local Government Act 2000 Sch 1 para 2(2)(a). As to the meaning of 'executive leader' see PARA 327.

8 The Local Government Act 2000 s 11(3)(b)(ii): see PARA 327.

9 Local Government Act 2000 Sch 1 para 2(2)(b).

10 This provision is subject to the Local Government Act 2000 s 11(8): see PARA 327.

11 Local Government Act 2000 Sch 1 para 2(3)(a).

12 Local Government Act 2000 Sch 1 para 2(3)(b). The Local Government Act 1972 s 101 (arrangements for the discharge of functions by local authorities) (see PARA 370) does not apply to the function of determining the number of councillors under the Local Government Act 2000 Sch 1 para 2(a): Sch 12 para 2(4).

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331. Leader and cabinet executives (England).

In relation to executive arrangements¹ by a local authority² which provide for a leader and cabinet executive (England)³, the executive arrangements must include provision which enables the executive leader⁴ to determine the number of councillors who may be appointed⁵ to the executive⁶.

The executive arrangements must also include provision which requires the executive leader to appoint one of the members of the executive to be his deputy (the 'deputy executive leader')⁷.

The deputy executive leader, unless he resigns as deputy executive leader or ceases to be a member of the authority, is to hold office until the end of the term of office of the executive leader⁸. However, the executive leader may, if he thinks fit, remove the deputy executive leader from office⁹. Where a vacancy occurs in the office of deputy executive leader, the executive leader must appoint another person in his place¹⁰. If for any reason the executive leader is unable to act or the office of executive leader is vacant, the deputy executive leader must act in his place¹¹.

The executive must act in the executive leader's place or must arrange for a member of the executive to act in his place if for any reason:

- (1) the executive leader is unable to act or the office of executive leader is vacant¹²; and
- (2) the deputy executive leader is unable to act or the office of deputy executive leader is vacant¹³.

1 As to the meaning of 'executive arrangements' see PARA 303. As to the election etc of the leader see the Local Government Act 2000 ss 44A-44H; and PARA 158.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 Sch 1 para 1A(1) (para 1A added by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 28). As to leader and cabinet executives in England see also PARA 327, and as to leader and cabinet executives in Wales see also PARA 332.

4 As to the meaning of 'executive leader' see PARA 327.

5 See under Local Government Act 2000 s 11(2A)(b) see PARA 327. As to membership of the executive, tenure of and removal from office, and the maintenance of the number of members of the executive determined by the authority see PARA 328 note 14.

6 Local Government Act 2000 Sch 1 para 1A(2) (as added: see note 3).

7 Local Government Act 2000 Sch 1 para 1A(3) (as added: see note 3).

8 Local Government Act 2000 Sch 1 para 1A(4) (as added: see note 3).

9 Local Government Act 2000 Sch 1 para 1A(5) (as added: see note 3).

10 Local Government Act 2000 Sch 1 para 1A(6) (as added: see note 3).

11 Local Government Act 2000 Sch 1 para 1A(7) (as added: see note 3).

12 See the Local Government Act 2000 Sch 1 para 1A(8)(a) (as added: see note 3).

13 See the Local Government Act 2000 Sch 1 para 1A(8)(b) (as added: see note 3).

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332. Leader and cabinet executives (Wales).

In relation to executive arrangements¹ by a local authority² which provide for a leader and cabinet executive (Wales)³, the executive arrangements may include provision with respect to the election and term of office of the executive leader⁴, and the appointment and term of office of members of the executive appointed⁵ by the authority⁶.

The executive arrangements must include provision⁷ which either:

- 255 (1) enables the authority to determine the number of councillors who may be appointed⁸ to the executive⁹; or
- 256 (2) enables the executive leader to determine the number of councillors who may be so appointed¹⁰.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 Sch 1 para 2(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 29(3)). As to leader and cabinet executives see also PARA 327, and as to leader and cabinet executives in England see also PARA 331.

4 Local Government Act 2000 Sch 1 para 2(2)(a). As to the meaning of 'executive leader' see PARA 327.

5 *Ie* under the Local Government Act 2000 s 11(3)(b)(ii): see PARA 327. As to membership of the executive, tenure of and removal from office, and the appointment of an interim mayor and executive where the offices are vacant or the office holders are unable to act, see PARA 328 note 14.

6 Local Government Act 2000 Sch 1 para 2(2)(b).

7 This provision is subject to the Local Government Act 2000 s 11(8): see PARA 327.

8 *Ie* under the Local Government Act 2000 s 11(3)(b): see PARA 327.

9 Local Government Act 2000 Sch 1 para 2(3)(a).

10 Local Government Act 2000 Sch 1 para 2(3)(b). The Local Government Act 1972 s 101 (arrangements for the discharge of functions by local authorities) (see PARA 370) does not apply to the function of determining the number of councillors under the Local Government Act 2000 Sch 1 para 2(3)(a): Sch 12 para 2(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 29(4)).

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D. MAYOR AND COUNCIL MANAGER

333. Mayor and council manager executives.

In relation to executive arrangements¹ by a local authority in Wales² which provide for a mayor and council manager executive³, the executive arrangements may include provision with respect to the appointment and term of office of the council manager⁴.

The executive arrangements must include provision which requires the elected mayor⁵ to appoint a member of the authority to be his deputy (the 'deputy mayor')⁶ who is entitled to the style of 'dirprwy faer'⁷. The deputy mayor may not be the chairman or vice-chairman of the authority⁸, nor a member of an overview and scrutiny committee of the authority⁹. The deputy mayor, unless he resigns as deputy mayor or ceases to be a member of the authority, is to hold office until the end of the term of office of the elected mayor¹⁰. However, the elected mayor may, if he thinks fit, remove the deputy mayor from office¹¹. Where a vacancy occurs in the office of deputy mayor, the elected mayor must appoint another person in his place¹².

Where for any reason the elected mayor is unable to act or the office of elected mayor is vacant, the deputy mayor must act in his place¹³. The council manager must act in the elected mayor's place, if for any reason: (1) the elected mayor is unable to act or the office of elected mayor is vacant¹⁴; and (2) the deputy mayor is unable to act or the office of deputy mayor is vacant¹⁵.

The council manager is entitled to attend, and speak at, meetings¹⁶ of the authority or any committee or sub-committee of the authority¹⁷, but is not entitled to vote at such meetings¹⁸. However, the council manager is entitled to attend and speak at meetings of an overview and scrutiny committee or sub-committee of the authority only if invited or required to do so by the committee or sub-committee¹⁹.

The council manager: (a) is to be regarded²⁰ as holding a politically restricted post under the authority²¹; (b) may not also be the person who has responsibility²² for the administration of the financial affairs of the authority²³; and (c) may not also be the person who is responsible²⁴ for performing the duties of the authority's monitoring officer²⁵.

The executive arrangements may include provision for the appointment by the elected mayor of one or more committees to advise the executive²⁶.

The Secretary of State and the Welsh Ministers²⁷ may by regulations make provision for or in connection with the appointment of a person (an 'assistant') to provide assistance to an elected mayor²⁸.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 Sch 1 para 3(1). As to mayor and council manager executives see also PARA 327.

4 Local Government Act 2000 Sch 1 para 3(2). As to the meaning of 'council manager' see PARA 327.

5 As to the meaning of 'elected mayor' see PARA 320 note 4.

6 Local Government Act 2000 Sch 1 para 3(3).

7 Local Government Act 2000 Sch 1 para 3(16).

8 Local Government Act 2000 Sch 1 para 3(4)(a). As to chairmen and vice-chairmen see PARA 327.

9 Local Government Act 2000 Sch 1 para 3(4)(b). As to overview and scrutiny committees see PARA 342 et seq.

10 Local Government Act 2000 Sch 1 para 3(5).

11 Local Government Act 2000 Sch 1 para 3(6).

12 Local Government Act 2000 Sch 1 para 3(7).

- 13 Local Government Act 2000 Sch 1 para 3(8).
- 14 Local Government Act 2000 Sch 1 para 3(9)(a).
- 15 Local Government Act 2000 Sch 1 para 3(9)(b).
- 16 As to meetings see PARAS 307, 619 et seq.
- 17 Local Government Act 2000 Sch 1 para 3(10)(a). The reference in the text to a committee or sub-committee of the authority includes a reference to a joint committee on which the authority is represented or a sub-committee of such a committee: Sch 1 para 3(12). As to committees and sub-committees see PARA 369 et seq; and as to joint committees see PARA 380.
- 18 Local Government Act 2000 Sch 1 para 3(10)(b). The council manager of a local authority is, however, entitled to vote at a meeting of a joint committee, or sub-committee of such a committee, if: (1) that joint committee or sub-committee has been appointed for the purpose of discharging functions which, as respects that local authority, are the responsibility of the executive of the local authority; and (2) the council manager is a member of that joint committee or sub-committee: Sch 1 para 3(12A) (added by SI 2001/1517; SI 2002/803).
- 19 Local Government Act 2000 Sch 1 para 3(11).
- 20 Ie for the purposes of the Local Government and Housing Act 1989 Pt I (ss 1-21).
- 21 Local Government Act 2000 Sch 1 para 3(13)(a). As to politically restricted posts see PARA 120 et seq.
- 22 Ie under the Local Government Act 1972 s 151: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624.
- 23 Local Government Act 2000 Sch 1 para 3(13)(b).
- 24 Ie under the Local Government and Housing Act 1989 s 5: see PARA 429.
- 25 Local Government Act 2000 Sch 1 para 3(13)(c). As to monitoring officers see PARA 429.
- 26 Local Government Act 2000 Sch 1 para 3(14). The membership of any such committee as is mentioned in Sch 1 para 3(14) need not be determined in accordance with the political balance requirements: Sch 1 para 3(15). As to political balance requirements see PARA 362 note 14.
- 27 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 28 Local Government Act 2000 Sch 1 para 6(1). Such regulations may include provision with respect to the terms and conditions of appointment of an assistant: Sch 1 para 6(2). However, nothing in Sch 1 para 6(2) affects the generality of the power under Sch 1 para 6(1): Sch 1 para 6(3). As to such regulations in relation to England see the Local Authorities (Elected Mayor and Mayor's Assistant) (England) Regulations 2002, SI 2002/975, reg 3; and PARA 329. At the date at which this volume states the law no regulations had been made under Sch 1 para 6 with regard to Wales.

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E. LONDON GOVERNMENT

334. London government.

Local government legislation with regard to executive arrangements applies to the authorities in London either in like manner as elsewhere or with modifications to meet the circumstances of local government in London¹.

¹ For executive arrangements in London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq.

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(ii) Additional Forms of Executive

335. Additional forms of executive.

In deciding whether to make regulations prescribing a particular form of executive¹, or which provision to make in relation to that form of executive², the Secretary of State and the Welsh Ministers³ must have regard to:

- 257 (1) any proposals made to him under these provisions by a local authority⁴;
- 258 (2) the extent to which he considers that the operation by a local authority of executive arrangements⁵ involving that form of executive would be likely to ensure that decisions of the authority are taken in an efficient, transparent and accountable way⁶;
- 259 (3) the extent to which that form of executive differs from the forms of executive for the time being permitted⁷;
- 260 (4) the number and description of authorities for which he considers that that form of executive, if prescribed in regulations⁸, would be an appropriate form of executive to consider⁹.

For the purposes of head (1) above, a local authority may propose to the Secretary of State a form of executive in relation to which it considers that the following conditions are satisfied¹⁰: (a) that the operation by the authority of executive arrangements involving that form of executive would be an improvement on the arrangements which the authority has in place for the discharge of its functions¹¹ at the time that the proposal is made to the Secretary of State¹²; (b) that the operation by the authority of executive arrangements involving that form of executive would be likely to ensure that decisions of the authority are taken in an efficient, transparent and accountable way¹³; and (c) that that form of executive, if prescribed in regulations¹⁴, would be an appropriate form of executive for all local authorities, or for any particular description of local authority, to consider¹⁵.

1 Ie under the Local Government Act 2000 s 11(5); see PARA 327. At the date at which this volume states the law no such regulations had been made; any such regulations that are local in nature are not noted in this work.

2 Ie under the Local Government Act 2000 s 17: see PARA 363.

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 Local Government Act 2000 s 12(1)(a). The proposals referred to in the text are proposals made under s 12(2): see the text and note 10. As to the meaning of 'local authority' see PARA 23.

5 As to the meaning of 'executive arrangements' see PARA 303.

6 Local Government Act 2000 s 12(1)(b).

7 Local Government Act 2000 s 12(1)(c). The forms of executive referred to in the text are forms of executive permitted by or under s 11: see PARA 327.

8 Ie regulations made under the Local Government Act 2000 s 11(5): see PARA 327.

9 Local Government Act 2000 s 12(1)(d).

10 See the Local Government Act 2000 s 12(2). Such a proposal must: (1) describe the form of executive to which it relates; (2) describe the provision which the authority considers should be made under s 17 (see PARA 363) in relation to that form of executive; and (3) explain why the authority considers that the conditions mentioned in s 12(3) (see the text and notes 11-15) are satisfied in relation to that form of executive: s 12(4).

11 As to the discharge of functions see PARA 369 et seq.

12 Local Government Act 2000 s 12(3)(a).

13 Local Government Act 2000 s 12(3)(b).

14 Ie regulations made under the Local Government Act 2000 s 11(5): see PARA 327.

15 Local Government Act 2000 s 12(3)(c).

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(iii) Varying Arrangements

336. Executive arrangements.

A local authority¹ in England which is operating executive arrangements² may vary the arrangements so that they provide for a different form of executive, and if it makes such a variation, vary the arrangements in such other respects (if any) as it considers appropriate³. Executive arrangements may be varied so they differ from the existing arrangements in any respect but still provide for the same form of executive⁴.

A local authority in England which is operating alternative arrangements may cease to operate alternative arrangements, and start to operate executive arrangements⁵.

A local authority in England which is operating alternative arrangements may vary the arrangements so that they differ from the existing arrangements in any respect⁶.

Except as otherwise provided⁷, a local authority which is operating executive arrangements or alternative arrangements may not vary, or cease to operate those arrangements⁸. In making a change in governance arrangements, the local authority must comply with any directions given by the Secretary of State in connection with the making of such a change⁹.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'executive arrangements' see PARA 303.

3 See the Local Government Act 2000 s 33A (ss 33A-33D, 33I added by the Local Government and Public Involvement in Health Act 2007 s 64); and PARA 310.

4 See the Local Government Act 2000 s 33B (as added: see note 3).

5 Local Government Act 2000 s 33C (as added: see note 3).

6 Local Government Act 2000 s 33D (as added: see note 3).

7 Ie as provided by the Local Government Act 2000 ss 33A-33D or in regulations under s 34, 35 or 36 (see PARAS 316-318).

8 Local Government Act 2000 s 33I(1) (as added: see note 3). Section 33I(1) is subject to the Local Government and Public Involvement in Health Act 2007 ss 71, 72 (see PARAS 367, 368): s 73(2).

9 Local Government Act 2000 s 33I(2) (as added: see note 3).

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337. Proposals by local authority.

A resolution of a local authority¹ is required in order for the authority to make a change in governance arrangements².

Where a local authority wishes to make a change in governance arrangements³, the local authority must draw up proposals⁴ for the change⁵, but before doing so the local authority must take reasonable steps to consult the local government electors for, and other interested persons in, the authority's area⁶. The proposals must include a timetable with respect to the implementation of the proposals, and details of any transitional arrangements which are necessary for the implementation of the proposals⁷, and may provide for the change in governance arrangements to be subject to approval in a referendum⁸. In drawing up the proposals, the local authority must consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness⁹. After drawing up the proposals, the local authority must secure that copies of a document setting out the proposals are available at their principal office for inspection by members of the public at all reasonable times, and publish in one or more newspapers circulating in its area a notice which states that the authority has drawn up the proposals, describes the main features of the proposals, states that copies of a document setting out the proposals are available at their principal office for inspection by members of the public at such times as may be specified in the notice, and specifies the address of their principal office¹⁰.

1 As to the meaning of 'local authority' see PARA 23.

2 Local Government Act 2000 s 33F(1) (ss 33E, 33F, 33I, 33M, 33N added by the Local Government and Public Involvement in Health Act 2007 s 64). The Local Government Act 2000 s 29(2) applies to a resolution under s 33F as it applied to a resolution to operate executive arrangements: s 33F(2) (as so added).

3 I.e. a change of the kind set out in Local Government Act 2000 s 33A (different form of executive), or s 33C (move to executive arrangements) (see PARA 336): s 33E(4) (as added: see note 1). Where the local authority is operating a mayor and cabinet executive the local authority may not make any proposals for the change in governance arrangements unless the elected mayor has given written consent to the proposed change: see s 33N (as so added).

4 Proposals for the kind of change as set out in the Local Government Act 2000 s 33A and s 33C must state the extent to which the functions specified in regulations under s 13(3)(b) are to be the responsibility of the executive which will be operated if the proposals are implemented: s 33J(1), (2) (as added: see note 2). The proposals (particularly any provision about timetables and transitional matters included in accordance with s 33E(3)) must be such as to ensure that the proposed change can take effect (so far as required to) in accordance with s 33G(2): ss 33I(3), 33J(3) (as so added). As to proposals generally see PARA 312.

5 Local Government Act 2000 s 33E(1), (2) (as added: see note 2). For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 128.

6 Local Government Act 2000 s 33E(6) (as added: see note 2).

7 Local Government Act 2000 s 33E(3) (as added: see note 2).

8 Local Government Act 2000 s 33E(5) (as added: see note 2). For the purposes of s 33K and s 33L a change in governance arrangements is subject to approval in a referendum in either of the following cases:

584 (1) where the proposals for implementing the local authority's current form of executive were themselves approved in a referendum (s 33M(1), (2) (as so added)); or

585 (2) where the local authority's proposals under s 33E provide for the change in governance arrangements to be subject to approval in a referendum (s 33M(1), (3) (as so added)).

As to proposals generally see PARA 312. As to referendums generally see PARA 314.

9 Local Government Act 2000 s 33E(7) (as added: see note 2).

10 Local Government Act 2000 s 33E(8) (as added: see note 2).

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338. Implementation: new executive or move to executive arrangements.

Where a local authority¹ passes a resolution which makes a change in governance arrangements² the local authority must cease operating the old form of executive, or the alternative arrangements, and start operating the form of executive which the change in governance arrangements provides for on the third day after the relevant elections³. Subject to this, however, the local authority must implement the change in governance arrangements in accordance with the timetable in the proposals⁴.

1 As to the meaning of 'local authority' see PARA 23.

2 I.e a change of the kind specified in the Local Government Act 2000 s 33A (new form of executive), or s 33C (move to executive arrangements) (see PARA 336): s 33G(1) (added by the Local Government and Public Involvement in Health Act 2007 s 64).

3 See the Local Government Act 2000 s 33G(2) (as added: see note 2). 'Relevant elections' means, if the change in governance arrangements provides for the local authority to operate: (1) a leader and cabinet executive (England): the appropriate elections of councillors; or (2) a mayor and cabinet executive: the first election of the mayor: s 33G(4) (as so added). In relation to certain single tier county councils s 33G(4), (5) do not apply and s 33G(2) applies with modifications: see the Local Government (Structural Changes) (Transitional Arrangements) (No 2) Regulations 2008, SI 2008/2867, reg 29.

4 Local Government Act 2000 s 33G(3) (as added: see note 2). For these purposes the 'appropriate elections of councillors' are the elections determined in accordance with whichever of the following paragraphs is applicable:

586 (1) if the local authority is currently operating a mayor and cabinet executive, the 'appropriate elections of councillors' are the ordinary elections of councillors of the local authority held on the day on which the next ordinary election of a mayor was expected to be held when the resolution to make the change in governance arrangements was passed (s 33G(5)(a) (as so added));

587 (2) if the local authority is not currently operating a mayor and cabinet executive, and is required to pass the resolution to make the change in governance arrangements during a permitted resolution period, the 'appropriate elections of councillors' are the first ordinary elections of councillors of the local authority to be held after the end of the permitted resolution period in which the resolution is passed (s 33G(5)(b) (as so added));

588 (3) if the local authority is not currently operating a mayor and cabinet executive, and is not required to pass the resolution to make the change in governance arrangements during a permitted resolution period, the 'appropriate elections of councillors' are the first ordinary elections of councillors of the local authority to be held after the resolution is passed (s 33G(5)(c) (as so added)).

As to proposals generally see PARA 312.

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339. Implementation: other change in governance arrangements.

If a local authority passes a resolution which makes a change¹ in governance arrangements the local authority² must implement the change in governance arrangements in accordance with the timetable in the proposals³.

1 le a change of the kind set out in the Local Government Act 2000 s 33B (variation of executive arrangements), or s 33D (variation of alternative arrangements) (see PARA 336).

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 33H (added by the Local Government and Public Involvement in Health Act 2007 s 64). As to proposals generally see PARA 312.

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340. Changes subject to approval in a referendum.

Where a local authority makes a change¹ in executive arrangements and the change is subject to approval in a referendum², the local authority must hold a referendum on its proposals before taking any steps to implement them³.

The local authority may not pass a resolution which makes the proposed change unless the result of the referendum is to approve the proposals⁴. Any such resolution must be passed within the period of 28 days beginning with the day when the referendum is held⁵. Any such resolution must be passed at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object⁶.

If the result of the referendum is not to approve the proposals, the local authority must publish in one or more newspapers circulating in its area a notice which summarises the proposals, states that the referendum did not approve the proposals, summarises the authority's existing executive arrangements, and states that the authority will be continuing to operate those arrangements⁷.

1 le of the kind set out in the Local Government Act 2000 s 33A (new form of executive) or s 33C (move to executive arrangements) (see PARA 336): s 33K(1) (added by the Local Government and Public Involvement in Health Act 2007 s 64). As to the meaning of 'local authority' see PARA 23.

2 As to referendums generally see PARA 314.

3 Local Government Act 2000 s 33K(1), (2) (as added: see note 1). As to proposals generally see PARA 312.

4 Local Government Act 2000 s 33K(3) (as added: see note 1).

5 Local Government Act 2000 s 33K(4) (as added: see note 1).

6 Local Government Act 2000 s 33K(5) (as added: see note 1).

7 Local Government Act 2000 s 33K(6) (as added: see note 1).

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341. Changes not subject to approval in a referendum.

Where a local authority makes a change¹ in executive arrangements and the change is not subject to approval in a referendum² any resolution to make the change in governance arrangements must be passed during a permitted resolution period³.

Where the local authority is operating a mayor and cabinet executive, and the proposed new form of executive is a leader and cabinet executive (England)⁴ the required consultation⁵ must last for at least 12 weeks⁶; and the local authority's proposals must include statements of the following things:

- 261 (1) the arguments in favour of making the proposed change⁷;
- 262 (2) any arguments against making the proposed change⁸;
- 263 (3) the local authority's reasons for wishing to make the proposed change⁹.

Where the local authority is operating a mayor and cabinet executive, and the proposed new form of executive is a form prescribed in regulations¹⁰ the resolution to make the change in governance arrangements must be passed at a meeting which is specially convened for the purpose of deciding the resolution with notice of the object and by a majority of at least two thirds of members¹¹ voting on it¹².

1 ie, of the kind set out in the Local Government Act 2000 s 33A (new form of executive) or s 33C (move to executive arrangements) (see PARA 336): s 33L(1) (added by the Local Government and Public Involvement in Health Act 2007 s 64). As to the meaning of 'local authority' see PARA 23.

2 As to referendums generally see PARA 314.

3 Local Government Act 2000 s 33L(1), (2) (as added: see note 1).

4 Local Government Act 2000 s 33L(3) (as added: see note 1).

5 ie that required by the Local Government Act 2000 s 33E(6) (see PARA 337).

6 Local Government Act 2000 s 33L(4)(a) (as added: see note 1).

7 Local Government Act 2000 s 33L(4)(b)(i) (as added: see note 1).

8 Local Government Act 2000 s 33L(4)(b)(ii) (as added: see note 1).

9 Local Government Act 2000 s 33L(4)(b)(iii) (as added: see note 1).

10 ie those under the Local Government Act 2000 s 11(5) (see PARA 327).

11 Including the elected mayor of the council where the council is operating a mayor and cabinet executive.

12 Local Government Act 2000 s 33L(5), (6) (as added: see note 1). As to proposals generally see PARA 312.

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(iv) Overview and Scrutiny Committees

342. Overview and scrutiny committees.

Executive arrangements¹ by a local authority² must include provision for the appointment by the authority of one or more overview and scrutiny committees of the authority³. Executive arrangements by a local authority must ensure that its overview and scrutiny committee has power, or its overview and scrutiny committees (or their overview and scrutiny committees, and any joint overview and scrutiny committees) have power between them⁴:

- 264 (1) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions⁵ which are the responsibility of the executive⁶;
- 265 (2) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive⁷;
- 266 (3) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive⁸;
- 267 (4) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive⁹;
- 268 (5) to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area¹⁰;
- 269 (6) in the case of the overview and scrutiny committee or committees of an authority to which certain provisions¹¹ apply, to review and scrutinise, in accordance with regulations¹², matters relating to the health service¹³ in the authority's area, and to make reports and recommendations on such matters in accordance with the regulations¹⁴.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local authority' see PARA 23.

3 See the Local Government Act 2000 s 21(1). An overview and scrutiny committee of a local authority is to be treated: (1) as a committee of a principal council for the purposes of access to meetings and documents (see the Local Government Act 1972 Pt VA (ss 100A-100K); and PARA 661 et seq); and (2) as a body to which the duty to allocate seats to political groups (see the Local Government and Housing Act 1989 s 15; and PARA 375) applies: Local Government Act 2000 s 21(11). The Local Government Act 1972 s 102(2) (see PARA 371) and s 102(5) (see PARA 371) are to apply to an overview and scrutiny committee of a local authority as they apply to a committee appointed under s 102 (see PARA 371): Local Government Act 2000 s 21(12). As to the meaning of 'principal council' see PARA 23. An overview and scrutiny committee of a local authority may not discharge any functions other than its functions under ss 21, 21A-21C, or any functions which may be conferred on it by virtue of regulations under s 21E (see PARA 355) or, as from a day to be appointed, any functions under the Police and Justice Act 2006 s 19 (see PARA 485): Local Government Act 2000 s 21(4) (amended by the Local Government and Public Involvement Act 2007 s 127, Sch 18 Pt 8; and prospectively amended by the Police and Justice Act 2006 Sch 14 para 38(2)).

4 Local Government Act 2000 s 21(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 127(1)(a)). For this purpose 'joint overview and scrutiny committee', in relation to a local authority, means:

589 (1) a joint overview and scrutiny committee within the meaning of the National Health Service Act 2006 s 245(2)(a) (see **HEALTH SERVICES** vol 54 (2008) PARA 537) appointed by the authority

concerned and one or more other local authorities (Local Government Act 2000 s 21(2A)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 127(1)(b));

590 (2) an overview and scrutiny committee of another local authority exercising relevant functions (within the meaning of the National Health Service Act 2006 s 245(1)) of the authority concerned by virtue of arrangements made under regulations under s 245(2)(b) (Local Government Act 2000 s 21(2A)(b) (as so added));

591 (3) a joint overview and scrutiny committee within the meaning of the National Health Service (Wales) Act 2006 s 185(2)(a) appointed by the authority concerned and one or more other local authorities (Local Government Act 2000 s 21(2A)(c) (as so added));

592 (4) an overview and scrutiny committee of another local authority exercising relevant functions (within the meaning of the National Health Service (Wales) Act 2006 s 185(1)) of the authority concerned by virtue of arrangements made under regulations under s 185(2)(b) (Local Government Act 2000 s 21(2A)(c) (as so added)); or

593 (5) a joint overview and scrutiny committee within the meaning of the Local Government and Public Involvement in Health Act 2007 s 123 (joint overview and scrutiny committees: local improvement targets) (see PARA 389) appointed by a group of partner authorities (within the meaning of s 123) which includes the authority concerned (Local Government Act 2000 s 21(2A) (d) (as so added)).

5 As to the meaning of 'discharge of functions' see PARA 324 note 9.

6 Local Government Act 2000 s 21(2)(a). The power of an overview and scrutiny committee under s 21(2)(a) to review or scrutinise a decision made but not implemented includes power: (1) to recommend that the decision be reconsidered by the person who made it; or (2) to arrange for its function under s 21(2)(a), so far as it relates to the decision, to be exercised by the authority: s 21(3). As to the functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324.

7 Local Government Act 2000 s 21(2)(b).

8 Local Government Act 2000 s 21(2)(c).

9 Local Government Act 2000 s 21(2)(d).

10 Local Government Act 2000 s 21(2)(e).

11 I.e the overview and scrutiny committee or committees of an authority to which the National Health Service Act 2006 s 244 or the National Health Service (Wales) Act 2006 s 184 applies (see **HEALTH SERVICES** vol 54 (2008) PARA 536).

12 I.e in accordance with regulations under either the National Health Service Act 2006 s 244 or the National Health Service (Wales) Act 2006 s 184: see PARA 343.

13 I.e within the meaning given by either the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 as appropriate and as extended by the provision concerned.

14 Local Government Act 2000 s 21(2)(f) (added by the Health and Social Care Act 2001 s 7(1); amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 205)).

UPDATE

342 Overview and scrutiny committees

TEXT AND NOTES--See also Local Government Act 2000 s 21ZA (added by Local Democracy, Economic Development and Construction Act 2009, s 31), where a local authority must designate one of their officers, to be known as a scrutiny officer, to discharge specified functions.

NOTE 4--In head (4), reference to 'Local Government Act 2000 s 21(2A)(c)' should be to 'Local Government Act 2000 s 21(2A)(d)'. In head (5), reference to 'Local Government Act 2000 s 21(2A)(d)' should be to 'Local Government Act 2000 s 21(2A)(e)'.

Head (5) Local Government Act 2000 s 21(2A)(e) amended: Local Democracy, Economic Development and Construction Act 2009 s 32(2).

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343. Functions of overview and scrutiny committees relating to the health service.

Regulations may be made relating to the functions of an overview and scrutiny committee in relation to the health service¹. Regulations may also be made providing for the appointment of a joint overview and scrutiny committee and the functions of that committee².

Certain information relating to the health service is exempt for the purposes of an item of business of matters at a meeting of an overview and scrutiny committee³.

The Common Council of the City of London⁴ may establish a committee which has, in relation to the City of London the powers in respect of the review and scrutiny of matters relating to the health service which a local authority's overview and scrutiny committee has in relation to authority's area⁵.

1 See the Local Government Act 2000 s 21(2)(f); the National Health Service Act 2006 s 244; the National Health Service (Wales) Act 2006 s 184; PARA 342; and **HEALTH SERVICES** vol 54 (2008) PARA 536. As to the regulations that have been made see **HEALTH SERVICES** vol 54 (2008) PARA 536.

2 See the National Health Service Act 2006 s 245; the National Health Service (Wales) Act 2006 s 185; and **HEALTH SERVICES** vol 54 (2008) PARA 537. As to the regulations that have been made see **HEALTH SERVICES** vol 54 (2008) PARA 537.

3 See the National Health Service Act 2006 s 246; the National Health Service (Wales) Act 2006 s 186; and **HEALTH SERVICES** vol 54 (2008) PARA 538. As to the descriptions of exempt information see the National Health Service Act 2006 Sch 17; the National Health Service (Wales) Act 2006 Sch 11; and **HEALTH SERVICES** vol 54 (2008) PARA 539.

4 'Common Council' means the Common Council of the City of London: National Health Service Act 2006 s 247(5).

5 See the National Health Service 2006 s 247; and **HEALTH SERVICES** vol 54 (2008) PARA 540.

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344. Sub-committees.

An overview and scrutiny committee¹ of a local authority²: (1) may appoint one or more sub-committees³; and (2) may arrange for the discharge of any of its functions⁴ by any such sub-committee⁵. However, a sub-committee of an overview and scrutiny committee may not discharge any functions other than those conferred on it under head (2) above⁶.

1 As to the appointment and functions of overview and scrutiny committees see PARA 342.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 21(6)(a).

4 As to the meaning of 'discharge of functions' see PARA 324 note 9.

5 Local Government Act 2000 s 21(6)(b). A sub-committee of an overview and scrutiny committee of a local authority is to be treated: (1) as a sub-committee of a principal council for the purposes of access to meetings and documents (see the Local Government Act 1972 Pt VA (ss 100A-100K); and PARA 661 et seq); and (2) as a body to which the duty to allocate seats to political groups (see the Local Government and Housing Act 1989 s 15; and PARA 375) applies: Local Government Act 2000 s 21(11). The Local Government Act 1972 s 102(2) (see PARA 371) and s 102(5) (see PARA 371) are to apply to a sub-committee of an overview and scrutiny committee of a local authority as they apply to a committee appointed under s 102 (see PARA 371): Local Government Act 2000 s 21(12). As to the meaning of 'principal council' see PARA 23.

6 Local Government Act 2000 s 21(7).

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345. Composition of overview and scrutiny committees.

An overview and scrutiny committee¹ of a local authority², or a sub-committee³ of such a committee, may not include any member of the authority's executive⁴. An overview and scrutiny committee of a local authority, or any sub-committee of such a committee, may include persons who are not members of the authority, but any such persons are not entitled to vote at any meeting of such a committee or sub-committee on any question which falls to be decided at that meeting, unless permitted⁵ to do so⁶.

1 As to the appointment and functions of overview and scrutiny committees see PARA 342.

2 As to the meaning of 'local authority' see PARA 23.

3 As to sub-committees of overview and scrutiny committees see PARA 344.

4 Local Government Act 2000 s 21(9).

5 Ie under Local Government Act 2000 Sch 1 para 12: Local Government Act 2000 s 21(10) (amended by Local Government Act 2003 Sch 7 para 80).

6 Local Government Act 2000 s 21(10). This is subject to any provision made by or under the Local Government Act 2000 Sch 1 paras 7-9 (see PARA 348) and as from a day to be appointed the Police and Justice Act 2006 s 20(6) (see PARA 485): Local Government Act 2000 s 21(10) (prospectively amended by the Police and Justice Act 2006 Sch 14 para 38(3)). At the date at which this volume states the law no such day had been appointed.

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346. Attendance at overview and scrutiny committees.

An overview and scrutiny committee¹ of a local authority² or a sub-committee³ of such a committee:

- 270 (1) may require members of the executive⁴, and officers⁵ of the authority, to
attend before it to answer questions⁶;
- 271 (2) may require any other member of the authority to attend before it to answer
questions relating to any function which is exercisable⁷ by the member⁸;
- 272 (3) may invite other persons to attend meetings of the committee⁹.

It is the duty of any member or officer mentioned in head (1) or head (2) above to comply with any such requirement as mentioned in that head¹⁰. However, a person is not obliged to answer any question which he would be entitled to refuse to answer in or for the purposes of proceedings in a court in England and Wales¹¹.

1 As to the appointment and functions of overview and scrutiny committees see PARA 342.

2 As to the meaning of 'local authority' see PARA 23.

3 As to sub-committees of overview and scrutiny committees see PARA 344.

4 See PARA 327 et seq.

5 As to officers see PARA 425 et seq.

6 Local Government Act 2000 s 21(13)(a).

7 ie exercisable by the member by virtue of the Local Government and Public Involvement in Health Act 2007 s 236 (exercise of functions by local councillors in England) (see PARA 378).

8 Local Government Act 2000 s 21(13)(aa) (added by the Local Government and Public Involvement in Health Act 2007 s 120(1)).

9 Local Government Act 2000 s 21(13)(b).

10 Local Government Act 2000 s 21(14) (amended by the Local Government and Public Involvement in Health Act 2007 s 120(2)).

11 Local Government Act 2000 s 21(15).

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347. Disability of members of authorities for voting on account of prejudicial interests.

Where a local authority in England is operating either executive arrangements or alternative arrangements, the following provisions apply in relation to members of a local authority attending a meeting of an overview and scrutiny committee¹. However, they cease to have effect with respect to a local authority as soon as that authority adopts a code of conduct for local government members and employees².

Where a member regards himself as having a prejudicial interest in a matter³, he must:

- 273 (1) disclose the existence of the interest at the commencement of the discussion of the matter or, if later, as soon as it becomes apparent to him that he must regard himself as having a prejudicial interest in the matter⁴;

- 274 (2) immediately after he has disclosed the existence of the interest, withdraw from the meeting at which the matter is being considered, unless he has obtained a dispensation from the Secretary of State⁵;
- 275 (3) not return to the meeting while the matter is under consideration⁶.

However, the above does not preclude any person from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the powers to grant a dispensation⁷.

The proper officer of the authority must record in a book to be kept for the purpose particulars of any disclosure made under head (1) above and the book must be open at all reasonable hours to the inspection of any member of the authority⁸.

1 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(1). References in these provisions to an overview and scrutiny committee include a reference to a committee of an authority operating alternative arrangements which is appointed to review or scrutinise decisions made, or other action taken, in connection with the discharge of functions of that authority: art 45(8).

2 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(9). As to such codes of conduct see the Local Government Act 2000 Pt III (ss 49-83); and see PARA 232 et seq.

3 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(3). A member of the local authority must regard himself as having a prejudicial interest in a matter if (1) he is present at a meeting of an overview and scrutiny committee of the local authority or a sub-committee of such a committee (whether or not he is a member of the committee or sub-committee); and (2) the matter is the subject of consideration at the meeting; and (3) the matter was the subject of, or relates to, a decision made, or action taken, by another committee or sub-committee or by a joint committee or sub-committee of a joint committee, of which he is also a member: art 45(2). See also note 1.

The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by art 45(2), (3) in any case in which the number of members of the overview and scrutiny committee, or the sub-committee of such a committee, disabled by those provisions at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the Secretary of State in the interests of the inhabitants of the area that the disability should be removed: art 45(5). This power of the Secretary of State includes power to remove, either indefinitely or for any period, any such disability which would otherwise attach to any member, or any class or description of member, of the authority, of an overview and scrutiny committee, or of a sub-committee of such a committee, by reason of such interests, and in respect of such matters, as may be specified by the Secretary of State: art 45(6).

4 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(3)(a).

5 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(3)(b). As to such dispensations see note 3.

6 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(3)(c).

7 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(7).

8 Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, art 45(4). Where the authority has a mayor and council manager executive, the council manager of the authority is also entitled to inspect the book: see art 45(4). Note however, that only a local authority in Wales may now operate a mayor and council manager executive: see PARAS 327, 333.

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348. Education functions of overview and scrutiny committees.

Provision is made for the overview and scrutiny committees¹ of local education authorities², whose functions relate wholly or partly to education, to include church³ and parent governor representatives⁴.

- 1 As to the appointment and functions of overview and scrutiny committees see PARA 342.
- 2 As to local education authorities see **EDUCATION**.
- 3 See the Local Government Act 2000 Sch 1 paras 7, 8; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 49.
- 4 See the Local Government Act 2000 Sch 1 para 9; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 49. See also Sch 1 paras 10, 11.

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349. Voting rights of co-opted members.

A local authority¹ in England may permit a co-opted member of an overview and scrutiny committee² of the authority to vote at meetings of the committee³. However permission may only be given in accordance with a scheme (a 'voting rights scheme') made by the local authority⁴. A scheme for this purpose may include:

- 276 (1) provision for a maximum or minimum in relation to the number of co-opted members of an overview and scrutiny committee entitled to vote at meetings of the committee⁵; and
- 277 (2) provision for giving effect to any maximum or minimum established under head (1) above⁶.

The Secretary of State may by regulations make provision about the exercise of such powers⁷ which may, in particular, require voting rights schemes:

- 278 (a) to provide for permission to be given only by means of approving a proposal by the committee concerned⁸;
- 279 (b) to provide for a proposal for the purposes of the scheme (a 'scheme proposal') to specify the person to whom the proposal relates, the questions on which it is proposed he should be entitled to vote and the proposed duration of his entitlement to vote, and to include such other provision about the form and content of such a proposal as the regulations may provide⁹;
- 280 (c) to provide for a scheme proposal to be made only in accordance with a published statement of the policy of the committee concerned about the making of such proposals¹⁰;
- 281 (d) to include such provision about the procedure to be followed in relation to the approval of scheme proposals as the regulations may provide¹¹.

The Secretary of State may by direction require a local authority to vary a voting rights scheme¹².

1 As to the meaning of 'local authority' see PARA 23.

2 As to the appointment and functions of overview and scrutiny committees see PARA 342. For this purpose references to a co-opted member, in relation to an overview and scrutiny committee of a local authority, are to a member of the committee who is not a member of the authority: Local Government Act 2000 Sch 1 para 12(5) (Sch 1 paras 12-14 added by the Local Government Act 2003 s 115).

3 Local Government Act 2000 Sch 1 para 12(1) (as added: see note 2).

4 Local Government Act 2000 Sch 1 para 12(2) (as added: see note 2). A local authority which makes a scheme for the purposes of Sch 1 para 12 must, while the scheme is in force, make copies of it available at its principal office at all reasonable hours for inspection by members of the public: Sch 1 para 14(1) (as so added). The power to make the scheme includes power to vary or revoke it: Local Government Act 2000 Sch 1 para 12(4) (as so added). If a local authority makes such a scheme, or varies or revokes such a scheme, it must as soon as reasonably practicable after doing so publish in one or more newspapers circulating in its area a notice which complies with this provision: Sch 1 para 14(2) (as so added). In the case of the making of such a scheme, the notice must record the making of the scheme, describe what it does, state that copies of it are available for inspection at the principal office of the local authority and specify the address of that office and the times when the scheme is available for inspection there: Sch 1 para 14(3) (as so added). In the case of the variation of such a scheme, the notice must record the variation, describe what it does, state that copies of the scheme as varied are available for inspection at the principal office of the local authority and specify the address of that office and the times when the scheme is available for inspection there: Sch 1 para 14(4) (as so added). The notice must also record the revocation: Sch 1 para 14(5) (as so added).

5 Local Government Act 2000 Sch 1 para 12(3)(a) (as added: see note 2).

6 Local Government Act 2000 Sch 1 para 12(3)(b) (as added: see note 2).

7 Local Government Act 2000 Sch 1 para 13(1) (as added: see note 2). Such regulations may include provision for the notification to the Secretary of State by local authorities of the making, variation or revocation of voting rights schemes: Sch 1 para 13(3) (as so added).

8 Local Government Act 2000 Sch 1 para 13(2)(a) (as added: see note 2).

9 Local Government Act 2000 Sch 1 para 13(2)(b) (as added: see note 2).

10 Local Government Act 2000 Sch 1 para 13(2)(c) (as added: see note 2).

11 Local Government Act 2000 Sch 1 para 13(2)(d) (as added: see note 2).

12 Local Government Act 2000 Sch 1 para 13(4) (as added: see note 2).

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350. Guidance.

In exercising, or deciding whether to exercise, any of its functions:

- 282 (1) an overview and scrutiny committee of a local authority in England¹, or a sub-committee of such a committee, must have regard to any guidance for the time being issued by the Secretary of State²; and

- 283 (2) an overview and scrutiny committee of a local authority in Wales, or a sub-committee of such a committee, must have regard to any guidance for the time being issued by the Welsh Ministers³.

Such guidance may make different provision for different cases or for different descriptions of committee or sub-committee⁴.

1 As to the meaning of 'local authority' see PARA 23. As to the functions of overview and scrutiny committees see PARA 342. As to the appointment and functions of overview and scrutiny committees see PARA 342.

2 Local Government Act 2000 s 21(16)(a) (s 21(16), (17) added by the Local Government and Public Involvement in Health Act 2007 s 125). As to the Secretary of State see PARA 96.

3 Local Government Act 2000 s 21(16)(b) (as added: see note 2). As to the Welsh Ministers see PARA 97.

4 Local Government Act 2000 s 21(17) (as added: see note 2).

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351. Reference of matters to overview and scrutiny committees.

Executive arrangements¹ by a local authority² must include provision which:

- 284 (1) enables any member of an overview and scrutiny committee of the authority to refer to the committee any matter which is relevant to the functions of the committee³;
- 285 (2) enables any member of a sub-committee of such a committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee⁴; and
- 286 (3) in the case of a local authority in England, enables any member of the authority to refer to an overview and scrutiny committee of the authority of which he is not a member any local government matter⁵ which is relevant to the functions of the committee⁶.

Such provision enables a person to refer a matter to a committee or sub-committee if it enables him to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee⁷.

1 As to the meaning of 'executive arrangements' see PARA 303.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 21A(1)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 119).

4 Local Government Act 2000 s 21A(1)(b) (as added: see note 3).

5 For this purpose 'local government matter', in relation to a member of a local authority, means a matter which relates to the discharge of any function of the authority, affects all or part of the electoral area for which the member is elected or any person who lives or works in that area and is not an excluded matter: Local Government Act 2000 s 21A(10) (as so added). For this purpose 'excluded matter' means any matter which is a

local crime and disorder matter within the meaning of the Police and Justice Act 2006 s 19 (local authority scrutiny of crime and disorder matters) or a matter of any description specified in an order made by the Secretary of State for the purposes of s 21A: s 21A(11) (as so added). The descriptions of matter specified for the purposes of the above definition of 'local government matter' are: (1) any matter relating to a planning decision; (2) any matter relating to a licensing decision; (3) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment; (4) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee: Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008, SI 2008/3261, art 2. A 'planning decision' means the Town and Country Planning Act 1990, the Planning (Listed Building and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning Act 2008: Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008, SI 2008/3261, art 1(3). 'Licensing decision' means any decision in relation to an application for any authorisation within the meaning of the Licensing Act 2003 s 2 or request for a review of any such decision or any enforcement decision made under the Licensing Act 2003 or subordinate legislation made under that Act: Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008, SI 2008/3261, art 1(3). 'Right of recourse to review' does not include any right to make a complaint to the Commission for Local Administration pursuant to the Local Government Act 1974: Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008, SI 2008/3261, art 1(3). A matter does not fall within a description in heads (1)-(3) if it consists of an allegation that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or a matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment: art 3.

6 Local Government Act 2000 s 21A(1)(c) (as added: see note 3). In considering whether to exercise the power which he has by virtue of s 21A(1)(c) in any case, a member of an authority must have regard to any guidance for the time being issued by the Secretary of State: s 21A(3) (as so added). Guidance under s 21A(3) may make different provision for different cases: s 21A(4) (as so added).

7 Local Government Act 2000 s 21A(2) (as added: see note 3). The following provisions apply where a local government matter is referred to an overview and scrutiny committee by a member of a local authority in accordance with provision made pursuant to s 21A(1)(c): s 21A(5) (as so added). In considering whether or not to exercise any of its powers under s 21(2) in relation to the matter, the committee may have regard to any powers which the member may exercise in relation to the matter by virtue of the Local Government and Public Involvement in Health Act 2007 s 236 (exercise of functions by local councillors in England) and any representations made by the member as to why it would be appropriate for the committee to exercise any of its powers under the Local Government Act 2000 s 21(2) in relation to the matter: s 21A(6) (as so added). If the committee decides not to exercise any of those powers in relation to the matter, it must notify the member of its decision and the reasons for it: s 21A(7) (as so added). Subject to s 21D (see PARA 354) the committee must provide the member with a copy of any report or recommendations which it makes to the authority or the executive under s 21(2) in relation to the matter: s 21A(8) (as so added).

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352. Duty of authority or executive to respond to overview and scrutiny committee.

Except in specified circumstances¹ the following applies where an overview and scrutiny committee of a local authority in England² makes a report or recommendations to the authority or the executive³. The overview and scrutiny committee may publish the report or recommendations⁴.

The overview and scrutiny committee must by notice in writing require the authority or executive⁵:

- 287 (1) to consider the report or recommendations⁶;
- 288 (2) to respond to the overview and scrutiny committee indicating what (if any) action the authority or the executive proposes to take⁷;

- 289 (3) if the overview and scrutiny committee has published the report or
recommendations under the above provisions, to publish the response⁸;
- 290 (4) if the overview and scrutiny committee provided a copy of the report or
recommendations to a member of the authority under the relevant provisions⁹, to
provide the member with a copy of the response¹⁰,

and to do so within two months beginning with the date on which the authority or executive received the report or recommendations or (if later) the notice¹¹.

1. le otherwise than by virtue of the Police and Justice Act 2006 s 19 (local authority scrutiny of crime and disorder matters) or by virtue of s 19(3)(a): s 21B(1) (s 21B added by the Local Government and Public Involvement in Health Act 2007 s 122). For the purposes of the Local Government Act 2000 s 21B references to an overview and scrutiny committee include references to a sub-committee of such a committee: s 21B(6)(a) (as so added).

2. As to the meaning of 'local authority' see PARA 23.

3. Local Government Act 2000 s 21B(1) (as added: see note 1). For the purposes of s 21B references to 'the authority' or 'the executive', in relation to an overview and scrutiny committee, or a sub-committee of such a committee, are to the authority by which the overview and scrutiny committee is established or to the executive of that authority: s 21B(6)(b) (as so added).

4. Local Government Act 2000 s 21B(2) (as added: see note 1).

5. It is the duty of an authority or executive to which a notice is given under the Local Government Act 2000 s 21B(3) to comply with the requirements specified in the notice: s 21B(4) (as added: see note 1). The provisions of s 21B(2)-(4) are subject to s 21D and to any provision made under s 22(12A): s 21B(5) (as so added).

6. Local Government Act 2000 s 21B(3)(a) (as added: see note 1).

7. Local Government Act 2000 s 21B(3)(b) (as added: see note 1).

8. Local Government Act 2000 s 21B(3)(c) (as added: see note 1).

9. le under the Local Government Act 2000 s 21A(8) (see PARA 351).

10. Local Government Act 2000 s 21B(3)(d) (as added: see note 1).

11. Local Government Act 2000 s 21B(3) (as added: see note 1).

UPDATE

352 Duty of authority or executive to respond to overview and scrutiny committee

TEXT AND NOTES--The Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009, SI 2009/1919, regs 13-15 apply to (1) the publication under the Local Government Act 2000 s 21B by the executive of a local authority of any document comprising a response to a report or recommendation of an overview and scrutiny committee; (2) the provision under s 21B by such an executive of a copy of such a document; and (3) the publication under SI 2009/1919 regs 3-8 by such an executive of any document comprising a response to a report or recommendation of an overview and scrutiny committee: reg 14. In publishing the document the executive must exclude any confidential information, and may exclude any relevant exempt information: reg 15(1). In providing a copy of the document to a member of the local authority the executive may exclude any confidential information or relevant exempt information: reg 15(2). Where information is excluded under reg 15(1) or (2), the executive, in publishing, or providing a copy of, the document may replace so much of the document as discloses the information with a summary which does not disclose

that information, and must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible: reg 15(3). If by virtue of reg 15(1)-(3) an executive, in publishing or providing a copy of the document excludes information, or replaces part of the document with a summary, it is nevertheless to be taken for the purposes of the Local Government Act 2000 s 21B or, where the requirement to publish or provide a copy arises under SI 2009/1919 regs 3-8, to have published or provided a copy of the response: reg 15(4). 'Confidential information' has the meaning given by the Local Government Act 1972 s 100A(3) (see PARA 661); 'exempt information' means information of any of the descriptions specified for the purposes of the Local Government Act 1972 Pt VA (ss 100A-100K) (see PARA 661 et seq) and, in relation to any response to a report or recommendations of an overview and scrutiny committee which has functions under the Local Government Act 2000 s 21(2)(f) (see PARA 342), includes information falling within any of the descriptions of information specified in the National Health Service Act 2006 Sch 17 (see **HEALTH SERVICES** vol 54 (2008) PARA 539), or in the National Health Service (Wales) Act 2006 Sch 11 (see **HEALTH SERVICES** vol 54 (2008) PARA 539); 'relevant exempt information' in relation to a response of the executive to a report or recommendations of an overview and scrutiny committee, means exempt information of a description specified in a resolution of the overview and scrutiny committee under the Local Government Act 1972 s 100A(4) (see PARA 661) which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered: SI 2009/1919 reg 13.

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353. Duties of certain partner authorities to have regard to reports and recommendations of overview and scrutiny committees.

The following applies where:

- 291 (1) except in specified circumstances¹, a relevant committee makes a report or recommendations to the authority or the executive²; and
- 292 (2) the report or any of the recommendations relates to a local improvement target which relates to a relevant partner authority and is specified in a local area agreement of the authority³.

The relevant committee⁴ may by notice in writing to the relevant partner authority require the relevant partner authority⁵ to have regard to the report or recommendation in question in exercising their functions⁶. This notice must be accompanied by a copy of the report or recommendations⁷.

It is the duty of a relevant partner authority to which a notice is given to comply with the requirement specified in the notice⁸.

¹ ie otherwise than by virtue of the Police and Justice Act 2006 s 19(1)(b) (local authority scrutiny of crime and disorder matters) or by virtue of s 19(3)(a): Local Government Act 2000 s 21C(1)(a)(i), (ii) (added by the Local Government and Public Involvement in Health Act 2007 s 122).

2 Local Government Act 2000 s 21C(1)(a) (as added: see note 1). For the purposes of s 21C 'the authority', in relation to a relevant committee, means in the case of an overview and scrutiny committee, the local authority by which it is established and, in the case of a sub-committee of an overview and scrutiny committee, the local authority by which the overview and scrutiny committee is established: s 21C(8) (as so added). 'The executive', in relation to a relevant committee, means the executive of the authority and 'local improvement target' and 'local area agreement' have the same meanings as in the Local Government and Public Involvement in Health Act 2007 Pt 5 Ch 1 (local area agreements): Local Government Act 2000 s 21C(8) (as so added).

3 Local Government Act 2000 s 21C(1)(b) (as added: see note 1).

4 For the purposes of the Local Government Act 2000 s 21C 'relevant committee' means: (1) any overview and scrutiny committee of a county council in England, a district council in England, other than a council for a district in a county for which there is a county council or a London borough council; or (2) a sub-committee of an overview and scrutiny committee within head (1): s 21C(8) (as added: see note 1).

5 For the purposes of the Local Government Act 2000 s 21C 'relevant partner authority', in relation to a relevant committee, means any person who is a partner authority in relation to the authority for the purposes of the Local Government and Public Involvement in Health Act 2007 Pt 5 Ch 1, other than a police authority or a chief officer of police, and references to a target relating to a relevant partner authority are to be construed in accordance with the Local Government and Public Involvement in Health Act 2007 s 105(3): Local Government Act 2000 s 21C(8) (as added: see note 1).

6 Local Government Act 2000 s 21C(2) (as added: see note 1). This does not apply if the relevant partner authority is a health service body and by virtue of the National Health Service Act 2006 s 244, the report was, or the recommendations were, made to the health service body (as well as to the authority or the executive): Local Government Act 2000 s 21C(5) (as so added). For this purpose 'health service body' means a National Health Service trust, an NHS foundation trust or a Primary Care Trust: s 21C(6) (as so added). The provisions of s 21C(2), (3) are subject to s 21D (see PARA 354): s 21C(7) (as so added).

7 Local Government Act 2000 s 21C(3) (as added: see note 1).

8 Local Government Act 2000 s 21C(4) (as added: see note 1).

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354. Publication of reports, recommendations and responses.

The overview and scrutiny committee¹ or the local authority², in publishing specified documents³ or providing a copy of the document to a relevant partner authority⁴ must exclude any confidential information⁵ and may exclude any relevant exempt information⁶.

The overview and scrutiny committee or the local authority, in providing a copy of the document to a member of the local authority, may exclude any confidential information or relevant exempt information⁷.

Where information is excluded under the above provisions, the overview and scrutiny committee or the local authority, in publishing, or providing a copy of, the document may replace so much of the document as discloses the information with a summary which does not disclose that information and must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible⁸.

If by virtue of the above provisions an overview and scrutiny committee, in publishing or providing a copy of a report or recommendations excludes information or replaces part of the report or recommendations with a summary, it is nevertheless to be taken for certain purposes⁹ to have published or provided a copy of the report or recommendations¹⁰.

1 For these purposes references to an overview and scrutiny committee include references to a sub-committee of such a committee: Local Government Act 2000 s 21D(7) (added by the Local Government and Public Involvement in Health Act 2007 s 122).

2 As to the meaning of 'local authority' see PARA 23.

3 Ie: (1) the publication under the Local Government Act 2000 s 21B (see PARA 352) of any document comprising a report or recommendations of an overview and scrutiny committee or a response of a local authority to any such report or recommendations; and (2) the provision of a copy of such a document to a member of a local authority under s 21A(8) or s 21B, or to a relevant partner authority under s 21C, by an overview and scrutiny committee or a local authority: s 21D(1) (as added: see note 1).

4 As to the meaning of 'relevant partner authority', in relation to an overview and scrutiny committee which is a relevant committee within the meaning of Local Government 2000 s 21C see PARA 353 note 5 (definition applied by s 21D(6) (as added: see note 1)).

5 As to the meaning of 'confidential information' see PARA 642 (definition applied by the Local Government Act 2000 s 21D(6) (as added: see note 1)).

6 Local Government Act 2000 s 21D(2) (as added: see note 1). As to the meaning of 'exempt information' see PARA 643 (definition applied by s 21D(6) (as so added)) and, in relation to any report or recommendations of an overview and scrutiny committee which has functions under s 21(2)(f) (see PARA 342) or any response to such a report or recommendation it also includes information which is exempt information under the National Health Service Act 2006 s 246 (see **HEALTH SERVICES** vol 54 (2008) PARA 538): Local Government Act 2000 s 21D(6) (as so added). 'Relevant exempt information' means: (1) in relation to a report or recommendations of an overview and scrutiny committee, exempt information of a description specified in a resolution of the overview and scrutiny committee under the Local Government Act 1972 s 100A(4) (see PARA 661) which applied to the proceedings, or part of the proceedings, at any meeting of the overview and scrutiny committee at which the report was, or recommendations were, considered; and (2) in relation to a response of the authority, exempt information of a description specified in such a resolution of the authority which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered: Local Government Act 2000 s 21D(6) (as so added).

7 Local Government Act 2000 s 21D(3) (as added: see note 1).

8 Local Government Act 2000 s 21D(4) (as added: see note 1).

9 Ie for the purposes of the Local Government Act 2000 s 21B(3)(c) or (d) (see PARA 352).

10 Local Government Act 2000 s 21D(5) (as added: see note 1).

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355. Overview and scrutiny committees of certain district councils.

The following applies to any district council which is a partner authority in relation to a county council (the 'related county council')¹.

The Secretary of State may by regulations² make provision under which a district council to which these provisions apply may confer on its overview and scrutiny committee, or any of its overview and scrutiny committees, power to make reports and recommendations to the related county council, or that council's executive, which relate to any local improvement target³ which relates to a relevant partner authority⁴ and is specified in a local area agreement⁵ of the county council⁶.

1 Local Government Act 2000 s 21E(1) (added by the Local Government and Public Involvement in Health Act 2007 s 124).

2 As to the Secretary of State see PARA 96. At the date at which this volume states the law no such regulations had been made.

3 As to the meaning of 'local improvement target' see PARA 387 note 3.

4 For these purposes 'relevant partner authority', in relation to a district council, means the related county council or any other authority which is a partner authority in relation to that county council, other than a police authority or a chief officer of police: Local Government Act 2000 s 21E(4) (as added: see note 1). As to the meaning of 'partner authority' see PARA 387 note 6 (definition applied by s 21E(4) (as so added)). The Local Government and Public Involvement in Health Act 2007 s 105(2), (3) (see PARA 388) apply for the purpose of determining whether a local improvement target relates to a relevant partner authority: Local Government Act 2000 s 21E(4)(c) (as so added).

5 As to local area agreements see PARA 387.

6 Local Government Act 2000 s 21E(2) (as added: see note 1). Regulations under s 21E(2) may make provision applying or reproducing any provision of s 21B, 21C or 21D (with or without modifications): s 21E(3) (as so added).

UPDATE

355 Overview and scrutiny committees of certain district councils

TEXT AND NOTES--Executive arrangements by a district council to which the Local Government Act 2000 s 21E applies may enable any of their overview and scrutiny committees to make reports and recommendations to the related county council, or that council's executive, which relate to any local improvement target which relates to a relevant partner authority, and is specified in a local area agreement of the county council: Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009, SI 2009/1919, reg 4(1). Where a report or any recommendation is made pursuant to such executive arrangements, regs 5-7 will take effect: reg 4(2). The overview and scrutiny committee may publish the report or recommendations: reg 5. Where the report or any recommendation relates to a local improvement target that relates to the district council by which the overview and scrutiny committee is established, the overview and scrutiny committee must by notice in writing require the related county council or, as the case may be, that council's executive (1) to consider the report or recommendation; (2) to respond to the overview and scrutiny committee indicating what, if any, action the county council propose, or the executive proposes, to take; and (3) if the overview and scrutiny committee has published the report or recommendations under reg 5, to publish the response, and to do so within a period of two months beginning with the date on which the county council or its executive receives the report or recommendations or, if later, the notice: reg 6(1). It is the duty of the related county council or, as the case may be, that council's executive, to which a notice is given under reg 6(1), to comply with the requirements specified in the notice: reg 6(2). Where a notice has been given under reg 6(1) the overview and scrutiny committee may, by notice in writing, require any partner authority other than the county council, a National Health Service trust, an NHS foundation trust, or a primary care trust, to which the local improvement target that is the subject of the report or any recommendation relates, to have regard to the report or recommendation in the exercise of its functions: reg 7(1). A notice under reg 7(1) must be accompanied by a copy of the report or recommendation: reg 7(2). It is the duty of the relevant partner authority to which a notice is given under reg 7(1) to comply with the requirement specified in the notice: reg 7(3). The Local Government Act 2000 s 21D applies to the publication or provision under SI 2009/1919 regs 3-8 of a document or a copy of a document as it applies to the publication of a document under the Local Government Act 2000 s 21B or the provision of a copy of a document under s 21C: SI 2009/1919 reg 8. An expression used both in regs 3-8 and in the Local Government Act

2000 s 21E has the same meaning in SI 2009/1919 regs 3-8 as it has in the Local Government Act 2000 s 21E: SI 2009/1919 reg 3.

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356. Provisions of certain information by certain partner authorities.

The Secretary of State may by regulations¹ make provision, in relation to a relevant committee² as to information³ which relevant partner authorities⁴ must provide to the relevant committee and as to information which may not be disclosed by a relevant partner authority to the relevant committee⁵.

The Secretary of State may also by regulations make provision, in relation to a relevant district council committee⁶ as to information⁷ which associated authorities⁸ must provide to the relevant district council committee and as to information which may not be disclosed by an associated authority to the relevant district council committee⁹.

1 As to the Secretary of State see PARA 96. At the date at which this volume states the law no such regulations had been made. Regulations under the Local Government Act 2000 s 22A may make different provision in relation to different persons or committees or descriptions of person or committee: s 22A(7) (as added: see note 3). The power conferred by s 22A(7) does not affect the power conferred by s 105(2)(b): s 22A(8) (as so added).

2 As to the meaning of 'relevant committee' see PARA 353 note 4.

3 For this purpose references to information do not include information in respect of which provision may be made in exercise of the power conferred by the Police and Justice Act 2006 s 20(5)(c) or (d) (guidance and regulations regarding crime and disorder matters) or the National Health Service Act 2006 s 244(2)(d) or (e) (functions of overview and scrutiny committees): Local Government Act 2000 s 22A(2) (s 22A added by the Local Government and Public Involvement in Health Act 2007 s 121(1)).

4 As to the meaning of 'relevant partner authority' see PARA 353.

5 Local Government Act 2000 s 22A(1) (as added: see note 3).

6 For this purpose 'relevant district council committee' means an overview and scrutiny committee of a district council which is not a responsible local authority (the 'district council') or a sub-committee of such a committee: Local Government Act 2000 s 22A(5) (as added: see note 3).

7 For this purpose references to information do not include information in respect of which provision may be made in exercise of the power conferred by the Police and Justice Act 2006 s 20(5)(c) or (d) (guidance and regulations regarding crime and disorder matters): Local Government Act 2000 s 22A(4) (as added: see note 3).

8 For this purpose 'associated authority', in relation to a relevant district council committee, means the county council which is the responsible local authority in relation to the district council or any person (other than the district council) which is a partner authority in relation to that county council, other than a police authority or a chief officer of police: Local Government Act 2000 s 22A(6) (as added: see note 3). As to the meanings of 'responsible local authority' and 'partner authority' see PARA 387 notes 2, 6 (definitions applied by s 22(6) (as so added)).

9 Local Government Act 2000 s 22A(4) (as added: see note 3).

UPDATE

356 Provisions of certain information by certain partner authorities

TEXT AND NOTES--Subject to the Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009, SI 2009/1919, reg 15 (see PARA 352), a relevant partner authority must provide to a relevant committee such information as that committee may reasonably require in order to discharge its functions, being information which (1) has been requested in writing; (2) relates to a local improvement target which relates to the relevant partner authority, and is specified in a local area agreement of the authority by which the relevant committee is established: reg 10(1). Subject to reg 15, an associated authority must provide to a relevant district council committee such information as that committee may reasonably require in order to discharge its functions, being information which (a) has been requested in writing; (b) is relevant to a local improvement target which relates both to the associated authority and to the authority by which the relevant district council committee is established, and is specified in a local area agreement of the county council which is the responsible authority in relation to the district council by which the relevant district council committee is established: reg 10(2). A relevant partner authority may not provide to the relevant committee and an associated authority may not provide to the relevant district council committee (i) information that was obtained by the authority from any other person where the provision of that information to the committee by the authority would constitute a breach of confidence actionable by any person; (ii) information the disclosure of which would, or would be likely to, prejudice the exercise of the functions of the authority or the legitimate interests of any person, including the authority holding it; (iii) personal information within the meaning of the Data Protection Act 1998 (see **CONFIDENCE AND DATA PROTECTION**), unless the disclosure is permitted by or under the Data Protection Act 1998; or (iv) other information the disclosure of which is prohibited by or under any enactment: reg 11(1). Where, but for reg 11(2), the disclosure of information would be prohibited by head (iii), the relevant partner authority or, as the case may be, the associated authority must revise it so that the individual concerned cannot be identified and if satisfied that disclosure of the information in that revised form is permitted by or under the Data Protection Act 1998, and is not otherwise prohibited, disclose it: SI 2009/1919 reg 11(2). Nothing in regs 9-12 requires a partner or associated authority to provide information, or not to provide information, in respect of which provision may be made in exercise of the power conferred by the Police and Justice Act 2006 s 20(5)(c) or (d), or the National Health Service Act 2006 s 244(2)(d) or (e): SI 2009/1919 reg 12. 'A local area agreement' has the meaning given by the Local Government and Public Involvement in Health Act 2007 s 106 (see PARA 387): 'local improvement target' has the meaning given by s 105 (see PARA 387): SI 2009/1919 reg 9(1). An expression used both in regs 9-12 and in the Local Government Act 2000 s 21C (see PARA 353) or for the purposes of s 22A(4) has the same meaning in SI 2009/1919 regs 9-12 as it has in the Local Government Act s 21C or, as the case may be, for the purposes of s 22A(4): SI 2009/1919 reg 9(2).

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(v) Discharge of Functions by the Executive

A. IN GENERAL

357. Discharge of functions by mayor and cabinet executive and leader and cabinet executive (England).

Any functions which under executive arrangements¹ are the responsibility of a mayor and cabinet executive² or a leader and cabinet executive (England)³ are to be discharged⁴ in accordance with the following provisions⁵. The senior executive member⁶ may discharge any of those functions, or may arrange for the discharge of any of those functions by the executive, by another member of the executive, by a committee of the executive or by an officer of the authority⁷. Where any functions may be discharged by a local authority executive, then, unless the senior executive member otherwise directs, the executive may arrange for the discharge of any of those functions by a committee of the executive or by an officer of the authority⁸. Where by virtue of this section any functions may be discharged by a member of a local authority executive, then, unless the senior executive otherwise directs, that member may arrange for the discharge of any of those functions by an officer of the authority⁹. Where by virtue of these provisions any functions may be discharged by a committee of a local authority executive, then, unless the senior executive member otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the authority¹⁰. Any such arrangements by a senior executive member, executive, member or committee for the discharge of any functions by an executive, member, committee or officer do not prevent the senior executive member, executive, member or committee by whom the arrangements are made from exercising those functions¹¹.

1 As to executive arrangements see PARA 303 et seq.

2 As to functions which are, or are not, the responsibility of an executive of a local authority under mayor and cabinet executive arrangements see PARA 324 note 1. As to mayor and cabinet executives generally see PARA 328.

3 As to functions which are, or are not, the responsibility of an executive of a local authority under mayor and cabinet executive arrangements see PARA 324 et seq. As to leader and cabinet executives (England) generally see PARA 331.

4 As to the meaning of 'discharge of functions' see PARA 324 note 9.

5 Local Government Act 2000 s 14(1) (substituted by the Local Government and Public Involvement in Health Act 2007 s 63(1), (2)). This is subject to the power to delegate under the Local Government Act 2000 s 18 (see PARA 360), s 19 (see PARA 361) or s 20 (see PARA 362).

6 I.e., in the case of a mayor and cabinet executive, the elected mayor and in the case of a leader and cabinet executive (England), the executive leader: Local Government Act 2000 s 14(7) (added by the Local Government and Public Involvement in Health Act 2007 s 63(1), (8)).

7 Local Government Act 2000 s 14(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (4)).

8 Local Government Act 2000 s 14(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (4)).

9 Local Government Act 2000 s 14(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (5)).

10 Local Government Act 2000 s 14(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (6)).

11 Local Government Act 2000 s 14(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (7)).

Discharge of Functions by the Executive/B. LEADER AND CABINET EXECUTIVE (WALES)/358.
Discharge of functions by leader and cabinet executive (Wales).

B. LEADER AND CABINET EXECUTIVE (WALES)

358. Discharge of functions by leader and cabinet executive (Wales).

Any functions which under executive arrangements¹ are the responsibility of a leader and cabinet executive (Wales)² are to be discharged³ in accordance with the following provisions⁴. The executive arrangements may make provision with respect to the allocation of any functions which are the responsibility of the executive among the executive⁵, any member of the executive⁶, any committee of the executive⁷ and any officers of the authority⁸. Where the executive arrangements make such provision, any person to whom a function is allocated in accordance with that provision may discharge the function⁹. Where or to the extent that the functions which are the responsibility of the executive are not allocated in accordance with such provision, the executive leader may discharge any of those functions¹⁰, or may arrange for the discharge of any of those functions by the executive, by another member of the executive, by a committee of the executive or by an officer of the authority¹¹.

The executive may arrange for the discharge of its functions by a committee of the executive¹² or by an officer of the authority¹³. A member of a local authority executive may arrange for the discharge of any of his functions by an officer of the authority¹⁴. A committee of a local authority executive may arrange for the discharge of any of its functions by an officer of the authority¹⁵.

Any such arrangements made by an executive leader, executive, member or committee for the discharge of any functions by an executive, member, committee or officer do not prevent the executive leader, executive, member or committee by whom the arrangements are made from exercising those functions¹⁶.

1 As to executive arrangements see PARA 303 et seq.

2 As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1. As to leader and cabinet executives (Wales) generally see PARA 332.

3 As to the meaning of 'discharge of functions' see PARA 324 note 9.

4 Local Government Act 2000 s 15(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 63(1), (9)). This is subject to the power to delegate under the Local Government Act 2000 s 18 (see PARA 360), s 19 (see PARA 361) or s 20 (see PARA 362).

5 Local Government Act 2000 s 15(2)(a).

6 Local Government Act 2000 s 15(2)(b). The reference in the text to the members of the executive includes a reference to the executive leader, and s 15(6) (see the text to note 14) in its application for the purposes of s 15(2)(b) is to be construed accordingly: s 15(10). As to the meaning of 'executive leader' see PARA 327.

7 Local Government Act 2000 s 15(2)(c).

8 Local Government Act 2000 s 15(2)(d). As to officers generally see PARA 425 et seq.

9 Local Government Act 2000 s 15(3).

10 Local Government Act 2000 s 15(4)(a).

11 Local Government Act 2000 s 15(4)(b). Where the executive leader makes or has made any arrangements under s 15(4)(b), he may direct that s 15(5) (see the text to notes 12-13), s 15(6) (see the text to note 14) or s 15(7) (see the text to note 15), as the case may be, is not to apply to any of the functions which are the subject of those arrangements or is not to apply to any of those functions in such cases or circumstances as he may direct: s 15(8).

- 12 See the Local Government Act 2000 s 15(5)(a).
- 13 See the Local Government Act 2000 s 15(5)(b).
- 14 See the Local Government Act 2000 s 15(6).
- 15 See the Local Government Act 2000 s 15(7).
- 16 Local Government Act 2000 s 15(9).

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C. MAYOR AND COUNCIL MANAGER (WALES)

359. Discharge of functions by mayor and council manager executive.

Any functions which under executive arrangements¹ are the responsibility of a mayor and council manager executive² are to be discharged³ in accordance with the following provisions⁴. The council manager⁵ may discharge any of those functions⁶ or may arrange for the discharge of any of those functions by the executive or by an officer of the authority⁷. In deciding whether or how to discharge any functions⁸, or whether to arrange for any functions to be discharged by the executive or an officer of the authority⁹, the council manager must have regard to any advice given by the elected mayor¹⁰.

Where by virtue of these provisions any functions may be discharged by the executive of a local authority, the executive may arrange for the discharge of any of those functions by an officer of the authority¹¹. Any such arrangements by a council manager or executive for the discharge of any functions by an executive or officer do not prevent the council manager or executive by whom the arrangements are made from exercising those functions¹².

- 1 As to executive arrangements see PARA 303 et seq.
- 2 As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1. As to mayor and council manager executives see PARA 333. Note that only a local authority in Wales may now operate a mayor and council manager executive: see PARA 327.
- 3 As to the meaning of 'discharge of functions' see PARA 324 note 9.
- 4 Local Government Act 2000 s 16(1). This is subject to the power to delegate under s 18 (see PARA 360), s 19 (see PARA 361) or s 20 (see PARA 362).
- 5 As to the meaning of 'council manager' see PARA 327.
- 6 Local Government Act 2000 s 16(2)(a).
- 7 Local Government Act 2000 s 16(2)(b).
- 8 Local Government Act 2000 s 16(3)(a).
- 9 Local Government Act 2000 s 16(3)(b).
- 10 Local Government Act 2000 s 16(3). As to the meaning of 'elected mayor' see PARA 320 note 4.
- 11 Local Government Act 2000 s 16(4).

12 Local Government Act 2000 s 16(5).

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D. COMMITTEES

360. Discharge of functions by area committees.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision for or in connection with enabling an executive of a local authority², or a committee or specified³ member of such an executive, to arrange for any functions which under executive arrangements⁴ are the responsibility of the executive⁵ to be discharged⁶ by an area committee⁷ of that authority⁸.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'local authority' see PARA 23.

3 For the purposes of the Local Government Act 2000 s 18, 'specified' means specified in regulations under s 18: s 18(3).

4 As to executive arrangements see PARA 303 et seq.

5 As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1.

6 As to the meaning of 'discharge of functions' see PARA 324 note 9.

7 For the purposes of the Local Government Act 2000 s 18, 'area committee', in relation to a local authority, means a committee or sub-committee of the authority which satisfies the following conditions: (1) the committee or sub-committee is established to discharge functions in respect of part of the area of the authority; (2) the members of the committee or sub-committee who are members of the authority are elected for electoral divisions or wards which fall wholly or partly within that part; and (3) either or both of the conditions in s 18(5) (see heads (a) and (b)) are satisfied in relation to that part: s 18(3), (4). Those conditions are: (a) that the area of that part does not exceed two-fifths of the total area of the authority; (b) that the population of that part, as estimated by the authority, does not exceed two-fifths of the total population of the area of the authority as so estimated: s 18(5). As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS**.

8 See the Local Government Act 2000 s 18(1). Regulations under s 18 may impose limitations or restrictions on the arrangements which may be made by virtue of the regulations, including limitations or restrictions on the functions which may be the subject of such arrangements: s 18(2). As to the regulations that have been made under s 18 see the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, SI 2000/2851 (amended by SI 2001/3961); Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802 (amended by SI 2002/2941); and Local Authorities (Executive Arrangements) (Discharge of Functions) (Amendment) (Wales) Regulations 2003, SI 2003/147).

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E. DISCHARGE BY OTHER AUTHORITY

361. Discharge of functions of and by another local authority.

The Secretary of State and the Welsh Ministers¹ may by regulations² make provision for or in connection with enabling an executive of a local authority³, or a committee or specified⁴ member of such an executive, to arrange for any functions which under executive arrangements⁵ are the responsibility of the executive⁶ to be discharged⁷ by another local authority⁸, or by an executive of another local authority⁹ or a committee or specified member of such an executive¹⁰. The Secretary of State and the Welsh Ministers may also by regulations make provision for or in connection with enabling a local authority¹¹ to arrange for the discharge of any of its functions¹² by an executive of another local authority¹³ or a committee or specified member of such an executive¹⁴.

The regulations may include provision¹⁵: (1) requiring, in the case of arrangements for the discharge of any functions by an executive of a local authority or a committee or member of such an executive, the approval of the authority to such arrangements¹⁶; (2) which, in the case of arrangements for the discharge of any functions by a local authority, enables any of those functions to be delegated¹⁷; (3) which, in the case of arrangements for the discharge of any functions by an executive of a local authority or a committee or member of such an executive, enables any of those functions to be delegated¹⁸.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the regulations made under the Local Government Act 2000 s 19 see the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, SI 2000/2851 (amended by SI 2001/3961), Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802 (amended by SI 2002/2941) and Local Authorities (Executive Arrangements) (Discharge of Functions) (Amendment) (Wales) Regulations 2003, SI 2003/147.

3 As to the meaning of 'local authority' see PARA 23.

4 For the purposes of the Local Government Act 2000 s 19, 'specified' means specified in regulations under s 19: s 19(8).

5 As to executive arrangements see PARA 303 et seq.

6 As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1.

7 As to the meaning of 'discharge of functions' see PARA 324 note 9.

8 Local Government Act 2000 s 19(1)(a). The reference in the text to another local authority is a reference to a local authority within the meaning of the Local Government Act 1972 s 101: see PARA 23.

9 Ie within the meaning of the Local Government Act 2000 Pt II (ss 10-48).

10 Local Government Act 2000 s 19(1)(b).

11 Ie within the meaning of the Local Government Act 1972 s 101: see PARA 23.

12 The reference in the text to the functions of a local authority, in a case where the authority is operating executive arrangements, is a reference to the functions which, under those arrangements, are not the responsibility of the authority's executive: Local Government Act 2000 s 19(3).

13 Ie within the meaning of the Local Government Act 2000 Pt II.

14 Local Government Act 2000 s 19(2).

15 Local Government Act 2000 s 19(4). Nothing in s 19(4) affects the generality of the power under s 19(1) (see the text and notes 1-10) or s 19(2) (see the text and notes 11-14): s 19(7).

16 Local Government Act 2000 s 19(4)(a).

17 Local Government Act 2000 s 19(4)(b). The provision which may be made under s 19(4)(b) includes provision which applies or reproduces, with or without modifications, any provisions of the Local Government Act 1972 s 101(2)-(4) (see PARA 370): Local Government Act 2000 s 19(5). Nothing in s 19(5) affects the generality of the power under s 19(1) (see the text and notes 1-10) or s 19(2) (see the text and notes 11-14): s 19(7).

18 Local Government Act 2000 s 19(4)(c). The provision which may be made under s 19(4)(c) includes provision which applies or reproduces, with or without modifications, any provisions of s 14(3)-(6) (see PARA 357), s 15(5)-(9) (see PARA 358) or s 16(3)-(5) (see PARA 359): s 19(6). Nothing in s 19(6) affects the generality of the power under s 19(1) (see the text and notes 1-10) or s 19(2) (see the text and notes 11-14): s 19(7).

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F. JOINT EXERCISE OF FUNCTIONS

362. Joint exercise of functions.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision for or in connection with permitting certain arrangements under the Local Government Act 1972² where any of the functions which are the subject of the arrangements are the responsibility of an executive of a local authority³ under executive arrangements⁴. This includes provision⁵:

- 293 (1) as to the circumstances in which the executive, or a committee or specified⁶ member of the executive, is to be a party to the arrangements in place of the authority⁷;
- 294 (2) as to the circumstances in which the authority and the executive or a committee or specified member of the executive are both to be parties to the arrangements⁸;
- 295 (3) as to the circumstances in which any functions of the local authority under certain provisions of the Local Government Act 1972⁹, so far as they relate to any joint committee¹⁰, are instead to be exercised by the executive or a committee or specified member of the executive¹¹;
- 296 (4) as to the circumstances in which certain functions¹² of the local authority, so far as they relate to any such joint committee, are to be exercised by the authority¹³;
- 297 (5) as to the circumstances in which appointments to any such joint committee by the executive, or a committee or specified member of the executive, need not be made in accordance with the political balance requirements¹⁴;
- 298 (6) as to the persons, including officers of the authority, who may be appointed to any such joint committee by the executive or a committee or specified member of the executive¹⁵.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 ie under the Local Government Act 1972 s 101(5): see PARA 380.

3 As to the meaning of 'local authority' see PARA 23.

4 Local Government Act 2000 s 20(1). As to executive arrangements see PARA 303 et seq. As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1.

5 Local Government Act 2000 s 20(2). Nothing in s 20(2) affects the generality of the power under s 20(1) (see the text and notes 1-4): s 20(3). As to the regulations that have been made under s 20 see the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, SI 2000/2851 (amended by SI 2001/3961), and in relation to Wales see the Local Authorities (Arrangements for the Discharge of Functions) (Wales) Regulations 2002, SI 2002/802 (amended by SI 2002/2941).

6 For the purposes of the Local Government Act 2000 s 20, 'specified' means specified in regulations under s 20: s 20(4).

7 Local Government Act 2000 s 20(2)(a).

8 Local Government Act 2000 s 20(2)(b).

9 *le* the Local Government Act 1972 s 101(2) (see PARAS 370, 379), s 102(1)(b) (see PARA 371), s 102(2) (see PARA 371) or s 102(3) (see PARA 371).

10 *le* any joint committee falling within the Local Government Act 2000 s 101(5)(a): see PARA 380.

11 Local Government Act 2000 s 20(2)(c).

12 *le* any functions under the Local Government Act 1972 s 101(2) (see PARAS 370, 379), s 102(1)(b), (2), (3) (s 102(2), (3)) (see PARA 371).

13 Local Government Act 2000 s 20(2)(d).

14 Local Government Act 2000 s 20(2)(e). 'Political balance requirements' means the provisions made by or under the Local Government and Housing Act 1989 ss 15-17, Sch 1 (see PARAS 375-377): Local Government Act 2000 s 48(1).

15 Local Government Act 2000 s 20(2)(f).

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G. DISCHARGE UNDER ADDITIONAL FORMS OF EXECUTIVE

363. Discharge of functions by other executive arrangements.

The Secretary of State or the Welsh Ministers¹ may by regulations make provision with respect to the ways in which any functions which under executive arrangements² are the responsibility of an executive³ which takes a form prescribed in regulations⁴ are to be discharged⁵.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to executive arrangements see PARA 303 et seq.

3 As to functions which are, or are not, the responsibility of an executive of a local authority under executive arrangements see PARA 324 note 1.

4 *le* under the Local Government Act 2000 s 11(5): see PARA 327.

5 Local Government Act 2000 s 17(1). As to the meaning of 'discharge of functions' see PARA 324 note 9. The provision which may be made by regulations under s 17 includes provision which applies or reproduces, with or without modifications, any provisions of s 14 (see PARA 357), s 15 (see PARA 358) or s 16 (see PARA 359): s 17(2). However, nothing in s 17(2) affects the generality of the power under s 17(1): s 17(3).

Any provision made by regulations under s 17 is subject to any provision made under s 18 (see PARA 360), s 19 (see PARA 361) or s 20 (see PARA 362): s 17(4).

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(3) ALTERNATIVE ARRANGEMENTS

364. Alternative arrangements.

The Secretary of State and the Welsh Ministers¹ may by regulations² specify arrangements ('alternative arrangements') by a local authority³ with respect to the discharge of its functions⁴ which are arrangements of a type⁵:

- 299 (1) which do not involve the creation and operation of an executive of the authority⁶;
- 300 (2) which include arrangements for the appointment of committees or sub-committees⁷ of the authority to review or scrutinise decisions made, or other action taken, in connection with the discharge of functions of the authority⁸; and
- 301 (3) which the Secretary of State or the Welsh Ministers consider are likely to ensure that decisions of the authority are taken in an efficient, transparent and accountable way⁹.

The arrangements which may be so specified include arrangements for the discharge of functions of a local authority by individual members of the authority or by individual members of any committee or sub-committee of the authority¹⁰, and arrangements for the appointment of committees or sub-committees of a local authority the membership of which is determined otherwise than in accordance with the political balance requirements¹¹.

Regulations may make provision with respect to committees or sub-committees falling within head (2) above¹² and for the purpose of determining the functions of a local authority which may, may not or must be the subject of alternative arrangements of any particular type¹³.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the regulations that have been made under the Local Government Act 2000 s 32 see the Local Authorities (Alternative Arrangements) (England) Regulations 2001, SI 2001/1299. For regulations made in relation to Wales see the Local Authorities (Alternative Arrangements) (Wales) Regulations 2007, SI 2007/397, and the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001, SI 2001/3711 (amended by SI 2005/2913).

3 As to the meaning of 'local authority' see PARA 23.

4 As to the discharge of functions see PARA 369 et seq.

5 Local Government Act 2000 s 32(1).

6 Local Government Act 2000 s 32(1)(a). As to local authority executives see PARA 327 et seq.

7 As to committees and sub-committees generally see PARA 371.

8 Local Government Act 2000 s 32(1)(b).

9 Local Government Act 2000 s 32(1)(c).

10 Local Government Act 2000 s 32(2)(a). However, nothing in s 32(2)(a) affects the generality of the power under s 32(1) (see the text and notes 1-9): s 32(5).

11 Local Government Act 2000 s 32(2)(b). However, nothing in s 32(2)(b) affects the generality of the power under s 32(1) (see the text and notes 1-9): s 32(5). As to the meaning of 'political balance requirements' see PARA 362 note 14.

12 See the Local Government Act 2000 s 32(3) (substituted by the Local Government and Public Involvement in Health Act 2007 s 127(2)). The regulations may make provision including:

- 594 (1) in the case of regulations made by the Secretary of State, provision which applies or reproduces (with or without modifications):
 1. (a) any provision of the Local Government Act 2000 ss 21-21D (see PARAS 342-354) or Sch 1 paras 7, 9-11 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 49) (s 32(3)(a)(i) (as so substituted));
 - 2
 2. (b) any provision made under s 21E (see PARA 355) or s 22A (see PARA 356) (s 32(3)(a)(ii) (as so substituted));
 - 3
 3. (c) any provision the National Health Service Act 2006 s 246 or Sch 17 (see **HEALTH SERVICES** vol 54 (2008) PARAS 538, 539) (Local Government Act 2000 s 32(3)(a)(iii) (as so substituted)); or
 - 4
 4. (d) any provision made under the National Health Services Act 2006 s 244 (see **HEALTH SERVICES** vol 54 (2008) PARA 536) (Local Government Act 2000 s 32(3)(a)(iv) (as so substituted)); and
 - 5
- 595 (2) in the case of regulations made by the Welsh Ministers, provision which applies or reproduces (with or without modifications):
 5. (a) any provision of s 21 or 21A(1)(a) or (b) or (2) or Sch 1 paras 8-11 (s 32(3)(b)(i) (as so substituted));
 - 6
 6. (b) any provision of the National Health Service Act 2006 Sch 17 (Local Government Act 2000 s 32(b)(ii) (as so substituted));
 - 7
 7. (c) any provision of the National Health Service (Wales) Act 2006 s 186 or Sch 11 (see **HEALTH SERVICES** vol 54 (2008) PARAS 538, 539) (Local Government Act 2000 s 32(b)(iii) (as so substituted)); or
 - 8
 8. (d) any provision made under the National Health Service (Wales) Act 2006 s 184 (see **HEALTH SERVICES** vol 54 (2008) PARA 536) (Local Government Act 2000 s 32(b)(iv) (as so substituted)).
 - 9

However, nothing in s 32(3) affects the generality of the power under s 32(1) (see the text and notes 1-9): s 32(5).

13 See the Local Government Act 2000 s 32(4). However, nothing in s 32(4) affects the generality of the power under s 32(1) (see the text and notes 1-9): s 32(5).

UPDATE

364 Alternative arrangements

NOTE 2--SI 2007/397 amended: SI 2009/2993.

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365. Proposals for the operation of alternative arrangements.

The authorities that may operate alternative arrangements¹ are: (1) any local authority² where the authority is the council for a district comprised in an area for which there is a county council³ and where the resident population of the authority's area on 30 June 1999 was less than 85,000⁴; and (2) any local authority which falls within any description of local authority specified in regulations made by the Secretary of State and the Welsh Ministers⁵.

Such local authorities must either draw up proposals for the operation of alternative arrangements of a particular type permitted by regulations⁶, or draw up proposals for the operation of executive arrangements⁷. In deciding whether to draw up proposals for alternative arrangements or proposals for executive arrangements, a local authority must take reasonable steps to consult the local government electors⁸ for, and other interested persons in, the authority's area⁹. In drawing up proposals for alternative arrangements, a local authority must consider the extent to which the proposals, if implemented, are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness¹⁰.

A local authority which draws up proposals for the operation of alternative arrangements must comply with such requirements as may be specified in regulations made by the Secretary of State¹¹.

1 As to the meaning of 'alternative arrangements' see PARA 364. As to the operation of alternative arrangements see PARA 366.

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 2000 s 31(1)(a), (2)(a). As to areas and authorities in England generally see PARA 24 et seq; and as to areas and authorities in Wales generally see PARA 37 et seq.

4 Local Government Act 2000 s 31(1)(a), (2)(b). For these purposes, the resident population of any area on 30 June 1999 must be taken to be the Registrar General's estimate of that population on that date: s 31(3). As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605 et seq.

5 Local Government Act 2000 s 31(1)(b). As to the Secretary of State and Welsh Ministers see PARAS 96-97. As to regulations made under s 31(1) see Local Authorities (Alternative Arrangements) (Wales) Regulations 2007, SI 2007/397.

6 Local Government Act 2000 s 31(4)(a). The regulations referred to in the text are those under s 32: see PARA 364.

7 See the Local Government Act 2000 s 31(4)(b). The proposals for executive arrangements referred to in the text are proposals under s 25: see PARA 312. As to the meaning of 'executive arrangements' see PARA 303.

8 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by the Local Government Act 2000 s 48(1).

9 See the Local Government Act 2000 s 31(5).

10 Local Government Act 2000 s 31(6).

11 Local Government Act 2000 s 31(7). The provision which may be made by virtue of s 31(7) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312) or s 26 (see PARAS 313, 314): s 31(8). However, nothing in s 31(8) affects the generality of the power under s 31(7): s 31(9). As to the regulations that have been made see the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000, SI 2000/2850. See also the Local Authorities (Proposals for Alternative Arrangements) (Wales) Regulations 2001, SI 2001/2293.

UPDATE

365 Proposals for the operation of alternative arrangements

NOTE 5--SI 2007/397 amended: SI 2009/2993.

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366. Operation of alternative arrangements in Wales.

Unless permitted or required to do so by virtue of any provision made by or under Part II of the Local Government Act 2000¹, a local authority in Wales² may not operate alternative arrangements³. A resolution⁴ of a local authority is required in order for the authority to operate alternative arrangements⁵. A local authority which passes a resolution to operate alternative arrangements may not at any subsequent time cease to operate those arrangements unless the authority operates executive arrangements in place of those arrangements⁶.

The Secretary of State and the Welsh Ministers⁷ may by regulations make provision for or in connection with enabling a local authority⁸ which is operating executive arrangements to operate alternative arrangements in place of the executive arrangements⁹. The Secretary of State and the Welsh Ministers may by regulations make provision for or in connection with enabling a local authority which is operating alternative arrangements to operate alternative arrangements which differ from the existing alternative arrangements in any respect¹⁰. The Secretary of State and the Welsh Ministers may by regulations make provision for or in connection with enabling a local authority which is operating alternative arrangements to operate executive arrangements in place of the alternative arrangements¹¹.

1 le the Local Government Act 2000 Pt II (ss 10-48).

2 As to the meaning of 'local authority' see PARA 23. As to the authorities that may operate alternative arrangements see PARA 365.

3 See the Local Government Act 2000 s 33(A1), (1) (s 33(A1) added by the Local Government and Public Involvement in Health Act 2007 s 74(1)). As to the meaning of 'alternative arrangements' see PARA 364.

4 As to resolutions see PARA 309 note 1.

5 Local Government Act 2000 s 33(2). Section 29(2) (see PARA 309), which relates to publicity for executive arrangements, applies for the purposes of the operation of alternative arrangements: see s 33(3). As to the meaning of 'executive arrangements' see PARA 303.

6 Local Government Act 2000 s 33(4). The local authority may operate executive arrangements in place of alternative arrangements by virtue of any provision made under s 33(9) (see the text and note 11) or s 34 (see PARA 316), s 35 (see PARA 317) or s 36 (see PARA 318): see s 33(4).

7 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

8 le a local authority to which the Local Government Act 2000 s 31 applies: see PARA 365.

9 Local Government Act 2000 s 33(5). The provision which may be made by virtue of s 33(5) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312), s 26 (see PARA 313), s 27 (see PARA 314) or s 28 (see PARA 315): s 33(6). However, nothing in s 33(6) affects the generality of the power under s 33(5): s 33(11). As to the regulations that have been made under s 33(5) see the Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (England) Regulations

2001, SI 2001/1003, and the Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004, SI 2004/3158. However in light of amendments made by the Local Government and Public Involvement in Health Act 2007, SI 2001/1003 is now considered spent.

10 Local Government Act 2000 s 33(7). The provision which may be made by virtue of s 33(7) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312) or s 26 (see PARA 313): s 33(8). However, nothing in s 33(8) affects the generality of the power under s 33(7): s 33(11). As to the regulations that have been made under s 33(7) see note 9.

11 Local Government Act 2000 s 33(9). The provision which may be made by virtue of s 33(9) includes provision which applies or reproduces, with or without modifications, any provisions of s 25 (see PARA 312), s 26 (see PARA 313), s 27 (see PARA 314), s 28 (see PARA 315) or s 29 (see PARA 309): s 33(10). However, nothing in s 33(10) affects the generality of the power under s 33(9): s 33(11). As to the regulations that have been made under s 33(9) see note 9.

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367. Larger authorities to cease operating alternative arrangements.

The following applies to a local authority¹ if the authority is operating alternative arrangements² and the resident population of the authority's area on 30 June 1999 was 85,000 or more³. The local authority must draw up proposals for ceasing to operate alternative arrangements⁴ and starting to operate executive arrangements which provide for a leader and cabinet executive (England)⁵.

The proposals must include all of the following:

- 302 (1) a statement of the extent to which the functions specified in regulations⁶ are to be the responsibility of the leader and cabinet executive (England)⁷;
- 303 (2) a timetable with respect to the implementation of the proposals⁸;
- 304 (3) details of any transitional arrangements which are necessary for the implementation of the proposals⁹.

After drawing up the proposals, the local authority must:

- 305 (a) secure that copies of a document setting out the proposals are available at the authority's principal office for inspection by members of the public at all reasonable times¹⁰; and
- 306 (b) publish in one or more newspapers circulating in its area a notice which states that the authority has drawn up the proposals¹¹, describes the main features of the proposals¹², states that copies of a document setting out the proposals are available at its principal office for inspection by members of the public at such times as may be specified in the notice¹³ and specifies the address of the principal office¹⁴.

A resolution of the local authority is required in order for the authority to adopt the proposed leader and cabinet executive (England)¹⁵. If the local authority passes the resolution the authority must make the move to the proposed leader and cabinet executive (England) in accordance with the timetable in the proposals¹⁶.

In complying with the above provisions, the local authority must comply with any directions given by the Secretary of State in connection with the above provisions¹⁷.

- 1 As to the meaning of 'local authority' see the Local Government Act 2000 s 48(1); and PARA 23 (definition applied by virtue of the Local Government and Public Involvement in Health Act 2007 s 73(5)). The Local Government Act 2000 s 33C (see PARA 336) does not apply to a local authority to which the Local Government and Public Involvement in Health Act 2007 s 71 applies: s 73(1).
- 2 As to the meaning of 'alternative arrangements' see the Local Government Act 2000 ss 32(1), 48(1); and PARA 364 (definition applied by virtue of the Local Government and Public Involvement in Health Act 2007 s 73(5)).
- 3 Local Government and Public Involvement in Health Act 2007 s 71(1). For these purposes the resident population of any area on 30 June 1999 is to be taken to be the Registrar General's estimate of that population on that date: s 71(11). Where a local authority starts to operate a leader and cabinet executive (England) in accordance with s 71 and draws up proposals for a change in those governance arrangements of the kind set out in the Local Government Act 2000 s 33A (see PARAS 310, 336), for the purposes of s 33L (see PARA 341), the first permitted resolution period is to be the period which starts with 1 October 2010 and ends with 31 October 2010 (rather than the other period ending with 31 December 2010 that is specified in the table in s 33O(5)): see the Local Government and Public Involvement in Health Act 2007 s 73(3), (4).
- 4 As to the failure to cease operating alternative arrangements see PARA 368.
- 5 Local Government and Public Involvement in Health Act 2007 s 71(2). As to the meaning of 'leader and cabinet executive (England)' see the Local Government Act 2000 s 11(2A); and PARA 327 (definition applied by virtue of the Local Government and Public Involvement in Health Act 2007 s 73(5)). Executive arrangements which come into operation in accordance with s 71 are to be treated as being operated after the passing of a resolution of the local authority under the Local Government Act 2000 s 33F (see PARA 337): Local Government and Public Involvement in Health Act 2007 s 71(9).
- 6 As specified in regulations under the Local Government Act 2000 s 13(3)(b) (see PARA 324).
- 7 Local Government and Public Involvement in Health Act 2007 s 71(3)(a).
- 8 Local Government and Public Involvement in Health Act 2007 s 71(3)(b). The timetable must be such as to ensure that the local authority will make the proposed move to executive arrangements no later than the day of the authority's annual meeting in 2009: s 71(4).
- 9 Local Government and Public Involvement in Health Act 2007 s 71(3)(c).
- 10 Local Government and Public Involvement in Health Act 2007 s 71(5)(a).
- 11 Local Government and Public Involvement in Health Act 2007 s 71(5)(b)(i).
- 12 Local Government and Public Involvement in Health Act 2007 s 71(5)(b)(ii).
- 13 Local Government and Public Involvement in Health Act 2007 s 71(5)(b)(iii).
- 14 Local Government and Public Involvement in Health Act 2007 s 71(5)(b)(iv).
- 15 Local Government and Public Involvement in Health Act 2007 s 71(6). The Local Government Act 2000 s 29(2) applies to a resolution under the Local Government and Public Involvement in Health Act 2007 s 71(6) as it applies to a resolution to operate executive arrangements: s 71(7).
- 16 Local Government and Public Involvement in Health Act 2007 s 71(8).
- 17 Local Government and Public Involvement in Health Act 2007 s 71(10). As to the Secretary of State see PARA 96.

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 CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(3) ALTERNATIVE ARRANGEMENTS/368.
 Failure to cease operating alternative arrangements.

368. Failure to cease operating alternative arrangements.

The following applies if the requirements to cease operating alternative arrangements¹ apply to a local authority² and it appears to the Secretary of State³ that the local authority will fail to start to operate a leader and cabinet executive (England)⁴ by the day of the authority's annual meeting in 2009⁵.

The Secretary of State may by order specify executive arrangements for the local authority which provide for a leader and cabinet executive (England)⁶. The leader and cabinet executive (England) which is so provided for must come into operation on the day of the local authority's annual meeting in 2009⁷.

1 The Local Government and Public Involvement in Health Act 2007 s 71 (see PARA 367) applies.

2 Local Government and Public Involvement in Health Act 2007 s 72(1)(a). As to the meaning of 'local authority' see the Local Government Act 2000 s 48(1); and PARA 23 (definition applied by virtue of the Local Government and Public Involvement in Health Act 2007 s 73(5)). Where a local authority starts to operate a leader and cabinet executive (England) in accordance with s 72 and draws up proposals for a change in those governance arrangements of the kind set out in the Local Government Act 2000 s 33A (see PARAS 310, 336), for the purposes of s 33L (see PARA 341), the first permitted resolution period is to be the period which starts with 1 October 2010 and ends with 31 October 2010 (rather than the other period ending with 31 December 2010 that is specified in the table in s 33O(5)): see the Local Government and Public Involvement in Health Act 2007 s 73(3), (4).

3 As to the Secretary of State see PARA 96.

4 As to the meaning of 'leader and cabinet executive (England)' see the Local Government Act 2000 s 11(2A); and PARA 327 (definition applied by virtue of the Local Government and Public Involvement in Health Act 2007 s 73(5)).

5 Local Government and Public Involvement in Health Act 2007 s 72(1)(b).

6 Local Government and Public Involvement in Health Act 2007 s 72(2). Arrangements which the Secretary of State specifies under s 72(2) are to be treated as having been made by the local authority itself: s 72(4). As soon as practicable after executive arrangements are specified under s 72(2), the local authority must comply with the Local Government Act 2000 s 29(2)(a), (b)(ii)-(v) (see PARA 309): Local Government and Public Involvement in Health Act 2007 s 72(6).

7 Local Government and Public Involvement in Health Act 2007 s 72(3). Arrangements which come into operation in accordance with s 72(3) are to be treated as being operated after the passing of a resolution of the authority under the Local Government Act 2000 s 33F: Local Government and Public Involvement in Health Act 2007 s 72(5).

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(4) DISCHARGE OF FUNCTIONS BY THE AUTHORITY

(i) Introduction

369. Discharge of functions.

The functions of local authorities¹ may be discharged by committees and sub-committees², officers³, joint committees⁴ and executives⁵. Where executive arrangements are in operation, some functions may be discharged by individual members of the executive as well as by committees or by officers of the authority⁶. Functions of local authorities may also be contracted out⁷, and in Wales there is provision for decentralisation and joint working arrangements⁸.

- 1 As to functions of local authorities generally see PARA 579 et seq.
- 2 As to the discharge of functions by committees and sub-committees see PARA 371 et seq. Provision is made for the political balance of local authority committees: see PARAS 375-377.
- 3 As to the discharge of functions by officers see PARA 379.
- 4 As to the discharge of functions by joint committees see PARA 380.
- 5 As to the discharge of functions by local authority executives see PARA 324 et seq. As to executive arrangements see PARA 303 et seq.
- 6 See PARAS 357-362.
- 7 As to contracting out see PARA 407 et seq.
- 8 As to decentralisation and joint working arrangements in Wales see PARA 382 et seq.

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370. Arrangements for the discharge of functions.

A local authority¹ may arrange for the discharge of any of its functions²:

- 307 (1) by a committee³, a sub-committee or an officer of the authority⁴; or
- 308 (2) by another local authority⁵.

However, a local authority may not under head (2) above arrange for the discharge of any of its functions by another local authority if, or to the extent that, that function is also a function of the other local authority and is the responsibility of the other authority's executive⁶. Arrangements made under head (2) above by a local authority in England (the 'first authority') with respect to the discharge of any of its functions are to cease to have effect with respect to that function if, or to the extent that: (a) the first authority is operating or begins to operate executive arrangements, and that function becomes the responsibility of the executive of that authority⁷; or (b) the authority with whom the arrangements are made (the 'second authority') is operating or begins to operate executive arrangements, that function is also a function of the second authority and that function becomes the responsibility of the second authority's executive⁸.

Where any functions of a local authority may be discharged by a committee, then, unless the local authority otherwise directs, the committee may arrange for the discharge of any of those functions by a sub-committee or an officer of the authority; and where any functions of a local authority may be discharged by a sub-committee of the authority, then, unless the local authority or the committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the authority⁹. Where arrangements are in force for the discharge of any functions of a local authority by another local authority, then, subject to the terms of the arrangements, that other authority may arrange for the discharge of those functions by one of its committees, sub-committees or officers¹⁰. However, any arrangements made by a local authority or committee for the discharge of any functions by a committee, sub-committee, officer or local authority do not prevent the authority or committee by whom the arrangements are made from exercising those functions¹¹. These provisions do not authorise the delegation of functions to an individual member of a committee¹². A local

authority's functions with respect to levying or issuing a precept for a rate¹³ must be discharged only by the local authority¹⁴.

1 As to the meaning of 'local authority' see PARA 23. As to the application of the Local Government Act 1972 ss 101-106 to police authorities see s 107. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq. As to further provision in relation to Wales see PARA 382 et seq.

2 This is subject to any express provision contained in the Local Government Act 1972 or any Act passed after it. For the purposes of ss 101, 102, references to the discharge of any of the functions of a local authority include references to the doing of anything calculated to facilitate, or conducive or incidental to, the discharge of any of those functions: s 101(12). See also *R v Broadland District Council, ex p Lashley* [2001] EWCA Civ 179, [2001] LGR 264, [2001] All ER (D) 71 (Feb). As to the functions of local authorities see PARA 579 et seq.

As to the discharge of functions under executive arrangements see PARA 324 et seq. As to executive arrangements see PARA 303.

3 Any enactment, except the Sea Fisheries Regulation Act 1966 s 1 (see **AGRICULTURE AND FISHERIES**), has ceased to have effect to the extent that it makes provision: (1) which empowers or requires local authorities or any class of local authorities to establish committees, including joint committees, for any purpose or enables a minister to make an instrument establishing committees of local authorities for any purpose or empowering or requiring a local authority or any class of local authorities to establish committees for any purpose; or (2) which empowers or requires local authorities or any class of local authorities to arrange or to join with other authorities in arranging for the exercise by committees so established or by officers of theirs of any of their functions, or provides that any specified functions of theirs are to be discharged by such committees or officers, or enables any minister to make an instrument conferring such a power, imposing such a requirement or containing such a provision: s 101(8), (9) (s 101(9) amended by the Local Government Act 1985 s 102, Sch 17; the Statute Law (Repeals) Act 1986; the Education Act 1993 s 307(1), (3), Sch 19 para 49, Sch 21 Pt II; the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; the Environment Act 1995 s 120, Sch 24; the Children's Act 2004 Sch 5(4) para 1; and the Health and Social Services and Social Security Adjudications Act 1983 s 30, Sch 10 Pt I).

The Local Government Act 1972 s 101 does not authorise a local authority to arrange for the discharge by any committee, sub-committee or local authority of any functions which by any enactment mentioned in s 101(9) are required or authorised to be discharged by a specified committee, but this does not prevent a local authority who is required by or under any such enactment to establish, or delegate functions to, a committee established by or under any such enactment from arranging under s 101 for the discharge of its functions by an officer of the local authority or by a committee, as the case may be: s 101(10).

As to the discharge of functions by committees and sub-committees see PARA 371 et seq. As to the discharge of functions by officers see PARA 379.

4 Local Government Act 1972 s 101(1)(a).

5 Local Government Act 1972 s 101(1)(b). As to joint arrangements between local authorities see PARA 380. An agreement under s 101 whereby one authority informally pays another to administer certain services can be terminated on reasonable notice: see *R v Rossendale Borough Council, ex p Whitworth Town Council* (1997) 96 LGR 507.

6 Local Government Act 1972 s 101(1A) (s 101(1A)-(1C) added by SI 2001/1517; SI 2002/803). The Local Government Act 1972 s 101(1A) does not affect arrangements made by virtue of the Local Government Act 2000 s 19 (see PARA 361): Local Government Act 1972 s 101(1C) (as so added).

7 Local Government Act 1972 s 101(1B)(a) (as added: see note 6). Section 101(1B) does not affect arrangements made by virtue of the Local Government Act 2000 s 19 (see PARA 361): Local Government Act 1972 s 101(1C) (as added: see note 6).

8 Local Government Act 1972 s 101(1B)(b) (as added: see note 6).

9 Local Government Act 1972 s 101(2).

10 See the Local Government Act 1972 s 101(3). The provisions of s 101(2) (see the text to note 6) are to apply in relation to the functions referred to in the text as they apply in relation to the authority's own functions: see s 101(3).

11 Local Government Act 1972 s 101(4). See *Huth v Clarke* (1890) 25 QBD 391, DC. The responsibility for the due discharge of the statutory duties delegated by an authority to a committee remains with the authority: *Manton v Brighton Corpn* [1951] 2 KB 393, [1951] 2 All ER 101. An authority delegating power can at any time resume its authority and revoke the delegation: *Manton v Brighton Corpn*. However, where a duly authorised

committee, sub-committee or officer has already acted, the local authority will in certain cases be functus officio, or in other respects bound by the action of its authorised committee, sub-committee or officer: see *Battelley v Finsbury Borough Council* (1958) 122 JP 169, 56 LGR 165.

12 See *Cook v Ward* (1877) 2 CPD 255, CA; *R v Secretary of State for the Environment, ex p Hillingdon London Borough Council* [1986] 2 All ER 273n, [1986] 1 WLR 807n, CA. A member may be authorised to appear in legal proceedings: see PARA 573. As to the ratification of acts of the chairman in recess see *R v Chapman, ex p Arlidge* [1918] 2 KB 298, DC.

13 As to rates see **RATING AND COUNCIL TAX**.

14 Local Government Act 1972 s 101(6) (amended by the Local Government and Housing Act 1989 ss 45(5), 194, Sch 12 Pt II). Certain other matters may not be devolved, eg the application for borough status (see PARAS 25, 38) or the promotion or opposition of a parliamentary Bill (see PARA 572). The Community Infrastructure Levy under the Planning Act 2008 Pt 11 is not a rate for the purposes of the Local Government Act 1972 s 101(6): s 101(6A) (added by the Planning Act 2008 s 224(1)).

UPDATE

370 Arrangements for the discharge of functions

NOTE 3--Local Government Act 1972 s 101(9) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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(ii) Committees and Sub-committees

A. APPOINTMENT

371. Appointment of committees and sub-committees to discharge functions.

For the purpose of discharging any functions¹:

- 309 (1) a local authority may appoint a committee² of the authority³;
- 310 (2) two or more local authorities may appoint a joint committee of those authorities⁴; or
- 311 (3) any such committee may appoint one or more sub-committees⁵.

For the purpose of discharging any functions by area committees⁶, a local authority in England may appoint a committee of the authority⁷, or any such committee may appoint one or more sub-committees⁸.

The number of members of a committee, their term of office and the area, if restricted, within which the committee is to exercise its authority must be fixed by the appointing authority or authorities or, in the case of a sub-committee, by the appointing committee⁹. The membership of a committee, other than a committee for regulating or controlling the finance of the authority or of its area, may include persons¹⁰ who are not members of the appointing authority or authorities or, in the case of a sub-committee, the authority or authorities of whom they are sub-committees¹¹. Every member of a committee appointed who at the time of his appointment was a member of the appointing authority or one of the appointing authorities must upon

ceasing to be a member of that authority also cease to be a member of the committee¹². The statutory provisions relating to meetings of local authorities¹³ apply in relation to committees and sub-committees¹⁴.

A local authority may appoint a committee, and two or more local authorities may join in appointing a committee, to advise the appointing authority or authorities on any matter relating to the discharge of its functions¹⁵. Where executive arrangements¹⁶ are in operation, a committee may also be appointed to advise any executive of the authority or authorities in England, or a committee or member of that executive¹⁷. Any such committee may consist of such persons, whether members of the appointing authority or authorities or not, appointed for such term as may be determined by the appointing authority or authorities¹⁸, and may appoint one or more sub-committees to advise the committee with respect to any such matter¹⁹.

A committee or sub-committee may, unless the local authority or the committee otherwise directs, arrange for the discharge of any of its functions by an officer of the authority²⁰.

1 le in pursuance of arrangements made under the Local Government Act 1972 s 101 (see PARA 370) or the Children Act 1989 s 53 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 967).

2 As to the meaning of 'local authority' see PARA 23.

3 Local Government Act 1972 s 102(1)(a) (amended by the Health and Social Services and Social Security Adjudications Act 1983 s 29, Sch 9 Pt I para 16; and the Children Act 1989 s 108(5), Sch 13 para 31). As from a day to be appointed a local authority may appoint a sub-committee to discharge any functions: see the Local Government Act 1972 s 102(1)(a) (amended by the Local Government and Housing Act 1989 Sch 11 para 25(a)). At the date at which this volume states the law no such day had been appointed.

Local authorities have wide powers to set criteria for membership of a committee, subject only to there being no irrationality: *R v Newham London Borough Council, ex p Haggerty* (1986) 85 LGR 48.

4 Local Government Act 1972 s 102(1)(b). As to joint committees see PARA 380.

5 Local Government Act 1972 s 102(1)(c).

6 le in pursuance of arrangements made under regulations made under the Local Government Act 2000 s 18: see PARA 360. As to area committees see PARA 360.

7 Local Government Act 1972 s 102(1A)(a) (s 102(1A) added by SI 2001/1517; SI 2002/803).

8 Local Government Act 1972 s 102(1A)(b) (as added: see note 7).

9 Local Government Act 1972 s 102(2) (amended by SI 2001/1517; SI 2002/803). As from a day to be appointed, the reference in the text to the appointing committee is to include a reference to the appointing authority or the appointing committee as the case may be: see the Local Government Act 1972 s 102(2) (amended by the Local Government and Housing Act 1989 Sch 11 para 25(b)). At the date at which this volume states the law no such day had been appointed.

A member cannot be compelled to serve on a committee against his will: *R v Sunderland Corpn* [1911] 2 KB 458, DC. See also *Manton v Brighton Corpn* [1951] 2 KB 393, [1951] 2 All ER 101. A local authority, in seeking to ensure that its policy is followed by a committee to which it has delegated powers and duties, may remove from the committee councillors who oppose that policy: *R v Greenwich London Borough Council, ex p Lovelace* [1991] 3 All ER 511, [1991] 1 WLR 506, CA. A majority group may, in principle, exclude other members from committees by passing a resolution in accordance with the standing orders: *R v Rushmoor Borough Council, ex p Crawford* (1981) Times, 28 November, DC.

10 Subject to the Local Government Act 1972 s 104: see PARA 372.

11 Local Government Act 1972 s 102(3) (amended by the Local Government and Housing Act 1989 s 13(8), Sch 12 Pt II; and SI 2001/1517; SI 2002/803).

12 Local Government Act 1972 s 102(5). However, for these purposes, a member of a local authority is not to be deemed to have ceased to be a member of the authority by reason of retirement if he has been re-elected a member of it not later than the day of his retirement: s 102(5).

13 le the Local Government Act 1972 s 99, Sch 12 paras 39-43: see PARAS 619-620.

14 Local Government Act 1972 Sch 12 para 44(1).

15 Local Government Act 1972 s 102(4).

16 As to executive arrangements see PARA 303 et seq. As to the discharge of functions under executive arrangements see PARA 324 et seq.

17 Local Government Act 1972 s 102(4) (amended by SI 2001/1517; SI 2002/803).

18 Local Government Act 1972 s 102(4)(a).

19 Local Government Act 1972 s 102(4)(b). As from a day to be appointed, a local authority may appoint one or more sub-committees of a committee appointed by it under s 102(4) to advise the committee with respect to any matter relating to the discharge of functions with respect to which the committee is appointed to advise: s 102(4A) (added by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 25(c)). At the date at which this volume states the law no such day had been appointed.

20 See the Local Government Act 1972 s 101(2); and PARA 379.

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372. Disqualification for membership of committees and joint committees.

A person who is disqualified under Part V of the Local Government Act 1972¹ for being elected² or being a member of a local authority³ is disqualified for being a member of a committee (including a sub-committee⁴) of that authority, or being a representative of that authority on a joint committee⁵ (including a sub-committee) of the authority and another local authority, whether the committee or joint committee is appointed under Part V of the Local Government Act 1972 or under any other enactment⁶.

A person is not, by reason of his being a teacher in, or being otherwise employed in, any school or other educational institution maintained or assisted by a local education authority, disqualified: (1) for being a member of any committee of any local authority appointed wholly or partly for the purpose of discharging any functions with respect to education conferred on it in its capacity as a local education authority⁷, or appointed for purposes connected with the execution of the Public Libraries and Museums Act 1964⁸; or (2) for being a representative of a local authority on a joint committee of the authority and another authority which has been appointed or established for any such purpose⁹.

The statutory provisions concerning proceedings for disqualification¹⁰, so far as applicable, apply with respect to membership of or a claim to be entitled to act as a member of a committee of a local authority or a joint committee of two or more local authorities as they apply to membership of or claims to be entitled to act as a member of a local authority¹¹.

1 ie the Local Government Act 1972 Pt V (ss 79-100). As to disqualification see PARA 119.

In the application of s 104 to the Common Council of the City of London, for the reference to Pt V there is substituted a reference to the enactments for the time being in force relating to disqualification for membership of the Common Council of the City of London: s 104(4). In the application of s 104 to the London Fire and Emergency Planning Authority, the reference to a person who is disqualified under Pt V for being elected or being a member of a local authority is to be treated as if it included a reference to a person who is disqualified under the Greater London Authority Act 1999 s 21 (see **LONDON GOVERNMENT**) from being elected or being the Mayor of London or a member of the London Assembly: Local Government Act 1972 s 104(5) (added by the Greater London Authority Act 1999 s 332(2)). As to local government in London see PARA 35; and **LONDON**

GOVERNMENT. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT.**

- 2 As to the election of councillors see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 204 et seq.
- 3 As to the meaning of 'local authority' see PARA 23.
- 4 As to the appointment of committees and sub-committees see PARA 371.
- 5 As to joint committees see PARA 380.
- 6 Local Government Act 1972 s 104(1).
- 7 Local Government Act 1972 s 104(2)(a) (amended by the Education Reform Act 1988 s 237, Sch 13 Pt II; the Education Act 1993 s 307(1), Sch 19 para 50; and the Education Act 1996 s 582(1), Sch 37 para 22).
- 8 Local Government Act 1972 s 104(2)(b). As to the Public Libraries and Museums Act 1964 see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 913 et seq.
- 9 Local Government Act 1972 s 104(2).
- 10 In the Local Government Act 1972 s 92: see PARA 301.
- 11 Local Government Act 1972 s 104(3).

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B. STANDING ORDERS

373. Standing orders.

Standing orders may be made as respects any committee¹ of a local authority² by that authority, or as respects a joint committee³ of two or more local authorities by those authorities, with respect to the quorum, proceedings and place of meeting of the committee or joint committee, including any sub-committee⁴. Subject to any such standing orders, the quorum, proceedings and place of meeting are to be such as the committee, joint committee or sub-committee may determine⁵.

- 1 As to the appointment of committees and sub-committees see PARA 371.
- 2 As to the meaning of 'local authority' see PARA 23.
- 3 In whether appointed or extinguished under the Local Government Act 1972 Pt VI (ss 101-110) or any other enactment. As to joint committees see PARA 380.
- 4 Local Government Act 1972 s 106.
- 5 Local Government Act 1972 s 106.

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374. Voting rights of members of certain committees.

A person who:

- 312 (1) is a member of a committee appointed¹ by a relevant authority and is not a member of that authority²;
- 313 (2) is a member of a joint committee³ appointed by two or more relevant authorities and is not a member of any of those authorities⁴; or
- 314 (3) is a member of a sub-committee⁵ appointed by such a committee as is mentioned in head (1) or head (2) above and is not a member of the relevant authority, or one of the relevant authorities, which appointed that committee⁶,

is for all purposes to be treated as a non-voting⁷ member of that committee, joint committee or, as the case may be, sub-committee⁸.

Nothing in these provisions prevents the appointment, where that appointment is required either by directions given by the Secretary of State⁹ or pursuant to regulations¹⁰, of a person who is not a member of a local education authority as a voting member¹¹ of: (a) any committee or sub-committee appointed by the local authority wholly or partly for the purpose of discharging any functions with respect to education conferred on it in its capacity as a local education authority¹²; (b) any joint committee appointed by two or more local authorities wholly or partly for the purpose of discharging any functions with respect to education conferred on them in their capacity as local education authorities¹³; or (c) any sub-committee appointed by any such committee or joint committee wholly or partly for the purpose of discharging any of that committee's functions with respect to education¹⁴.

Furthermore, nothing in these provisions prevents the appointment of a council manager¹⁵ of a local authority, or one other officer of that local authority in his place, as a voting member of a joint committee, or a sub-committee of such a committee, where: (i) that local authority has a mayor and council manager executive¹⁶; and (ii) the joint committee or the sub-committee has been appointed for the purpose of discharging functions which, as respects that local authority, are the responsibility of that executive¹⁷.

Where a person is treated as a non-voting member of any committee, joint committee or sub-committee, he is not entitled to vote at any meeting of the committee, joint committee or sub-committee on any question which falls to be decided at that meeting¹⁸.

1 le under a power to which the Local Government and Housing Act 1989 s 13 applies. The powers to which s 13 apply are the powers conferred on any relevant authority by the Local Government Act 1972 s 102(1) (see PARA 371).

For the purposes of the Local Government and Housing Act 1989 s 13, 'relevant authority' means a local authority of any of the descriptions specified in s 21(1)(a)-(f) or s 21(1)(h)-(j) (see PARA 23) or any parish or community council: s 13(9) (definition amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 36(b)). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to the appointment of committees and sub-committees see PARA 371.

2 Local Government and Housing Act 1989 s 13(1)(a).

3 As to joint committees see PARA 380.

4 Local Government and Housing Act 1989 s 13(1)(b).

5 As to sub-committees see PARA 371.

6 Local Government and Housing Act 1989 s 13(1)(c).

7 For the purposes of the Local Government and Housing Act 1989 s 13, references to voting include references to making use of a casting vote: s 13(9). As to votes generally see PARA 623.

8 Local Government and Housing Act 1989 s 13(1). However, nothing in these provisions requires a person to be treated as a non-voting member of a committee or sub-committee which is: (1) a local fisheries committee for any sea fisheries district; (2) a committee established in accordance with any regulations made by virtue of the Superannuation Act 1972 s 7 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875); (3) a committee appointed under the Local Government Act 1972 s 102(4) (see PARA 371); (4) a committee constituted in accordance with the Education Act 1996 Sch 33 Pt I (repealed: see now the School Standards and Framework Act 1998 s 94, Sch 24; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 393); (5) a committee established exclusively for the purpose of discharging such functions of a relevant authority as may be prescribed by regulations made by the Secretary of State or the Welsh Ministers; (6) a sub-committee appointed by a committee falling within any of heads (1)-(5) above or such a sub-committee as is so prescribed: Local Government and Housing Act 1989 s 13(3), (4) (s 13(4) amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 4 Pt I para 36(a), Sch 9 Pt I; the Environment Act 1995 s 120, Sch 24; the Education Act 1996 s 582(1), Sch 37 para 96(2)). However, except in a case of a sub-committee appointed by a committee falling within head (3) above and in such cases as may be prescribed by regulations made by the Secretary of State, a person who is a member of a sub-committee falling within head (3) above is to be treated for all purposes as a non-voting member of that sub-committee unless he is a member of the committee which appointed the sub-committee: see the Local Government and Housing Act 1989 s 13(3). As to the regulations that have been made under s 13 see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (amended by SI 1991/1398; SI 1993/1339; SI 1998/1918; SI 1999/500); and the Parish and Community Councils (Committees) Regulations 1990, SI 1990/2476. As to voting on account of interests in contracts see PARA 286. As to local fisheries committees see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

9 le under the Education Act 1996 s 499: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50.

10 le under the Education Act 1996 s 499(6): see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50.

11 See the Local Government and Housing Act 1989 s 13(5) (substituted by the Education Act 1996 s 582(1), Sch 37 para 96(3); and amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 22). The reference in the Local Government and Housing Act 1989 s 13(5) to a voting member, in relation to any committee, joint committee or sub-committee appointed for the purpose mentioned in s 13(5) is a reference to a person who is entitled to vote at any meeting of that committee or sub-committee on any question which falls to be decided at that meeting: s 13(7) (amended by the Education Act 1993 s 307(1), Sch 19 para 156(d); and the Education Act 1996 s 582(1), Sch 37 para 96(1)(b), (4)).

12 Local Government and Housing Act 1989 s 13(5)(a) (as substituted: see note 11).

13 Local Government and Housing Act 1989 s 13(5)(b) (as substituted: see note 11).

14 Local Government and Housing Act 1989 s 13(5)(c) (as substituted: see note 11).

15 As to the meaning of 'council manager' see PARA 327; definition applied by the Local Government and Housing Act 1989 s 13(9) (definition in s 13(9) added by SI 2001/1517; SI 2002/809).

16 Local Government and Housing Act 1989 s 13(5A)(a) (s 13(5A) added by SI 2001/1517; SI 2002/803, arts 2, 6(1)). As to mayor and council manager executives, which may now only be operated by a local authority in Wales see PARAS 327, 333. As to executive arrangements see PARA 303.

17 Local Government and Housing Act 1989 s 13(5A)(b) (as added: see note 16).

18 Local Government and Housing Act 1989 s 13(7).

UPDATE

374 Voting rights of members of certain committees

NOTE 1--Definition of 'relevant authority' in Local Government and Housing Act 1989 s 13(9) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81.

NOTE 8--Local Government and Housing Act 1989 s 13(4) further amended: Marine and Coastal Access Act 2009 Sch 14 para 14 (not yet in force).

Local Government and Housing Act 1989 s 13(4) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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C. ALLOCATION OF SEATS

375. Duty to allocate seats to political groups.

It is the duty of a relevant authority¹ having power from time to time to make appointments to a body to which these provisions apply² to review the representation of different political groups on the body³: (1) where the authority holds annual meetings⁴ and the members of the authority are divided into different political groups at the time of any such meeting, at or as soon as practicable after the meeting⁵; (2) as soon as practicable after any such division occurs⁶; and (3) at such other times as may be prescribed by regulations made by the Secretary of State or the Welsh Ministers⁷.

Except in such cases as may be prescribed by regulations made by the Secretary of State or the Welsh Ministers, it is the duty of every committee of a relevant authority which is a committee having power from time to time to make appointments to a body to review the representation of different political groups on the body as soon as practicable after any occasion on which the members of the committee are changed in consequence of a determination under these provisions⁸.

Where at any time the representation of different political groups on a body to which these provisions apply falls to be reviewed by any relevant authority or committee of a relevant authority, it is the duty of that authority or committee, as soon as practicable after the review, to determine the allocation to the different political groups into which the members of the authority are divided of all the seats which fall to be filled by appointments made from time to time by that authority or committee⁹. In performing this duty¹⁰ and in exercising its power, at other times, to determine the allocation to different political groups of seats on a body¹¹, a relevant authority or committee of a relevant authority must make only such determinations as give effect, so far as reasonably practicable, to the following principles¹²: (a) that not all the seats on the body are allocated to the same political group¹³; (b) that the majority of the seats on the body are allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership¹⁴; (c) subject to heads (a) and (b) above, that the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority¹⁵; and (d) subject to heads (a) to (c) above, that the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority¹⁶.

The Secretary of State or the Welsh Ministers may by regulations make provision¹⁷: (i) as to the circumstances in which the members of a relevant authority are to be treated as divided into different political groups¹⁸; (ii) as to the persons who are to be treated as members of such a group and as to when a person is to be treated as having ceased to be a member of such a group¹⁹; (iii) requiring the question whether a person is or is not a member of a political group to be determined in such manner as may be provided for by or under the regulations²⁰; (iv)

specifying the manner in which, and times at which, the wishes of such a group are to be expressed and the consequences of a failure by such a group to express its wishes²¹.

1 For these purposes, 'relevant authority' means a local authority of any of the descriptions specified in the Local Government and Housing Act 1989 s 21(1)(a)-(c), s 21(f) or s 21(h)-(j) (see PARA 23); s 15(7), Sch 1 para 4(1) (definition amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 44(b)).

2 Subject to such exceptions as may be prescribed by regulations made by the Secretary of State, the Local Government and Housing Act 1989 s 15 applies, in relation to any relevant authority or committee of a relevant authority: (1) to any ordinary committee or ordinary sub-committee of the authority; (2) to any advisory committee of the authority and to any sub-committee appointed by such an advisory committee; and (3) to any such body falling within Sch 1 para 2 as is a body at least three seats on which fall from time to time to be filled by appointments made by the authority or committee: Sch 1 para 1.

The bodies falling within Sch 1 para 1 are: (a) a relevant authority which is a local authority of any of the descriptions specified in s 21(1)(f) or s 21(h)-(j) (see PARA 23); (b) a local authority of any of the descriptions specified in s 21(1)(k) and s 21(1)(n) (see PARA 23); (c) a national park authority; (d) a conservation board established by order under the Countryside and Rights of Way Act 2000 s 86; (e) a local fisheries committee for any sea fisheries district; (f) a committee established in accordance with any regulations made by virtue of the Superannuation Act 1972 s 7 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875); (g) a board or committee appointed by one or more relevant authorities in exercise of a power conferred by a local enactment, being a board or committee seats on which are required to be filled by the appointment of members of that authority or of those authorities; (h) a joint committee not falling within heads (a)-(g) appointed by two or more relevant authorities under the Local Government Act 1972 s 102(1)(b) (see PARA 371): Sch 1 para 2(1) (amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 4 Pt I para 44(a), s 93 Sch 9 Pt I; the Environment Act 1995 ss 63(5), 78, 120, Sch 7 para 2(8), Sch 10 para 31(5), Sch 24; and the Countryside and Rights of Way Act 2000 s 86(2), Sch 13 para 4(7)). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to local fisheries committee see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964. As to joint committees see PARA 380.

For these purposes, 'ordinary committee', in relation to any relevant authority, means any committee of the authority appointed under the Local Government Act 1972 s 102(1)(a) (see PARA 371), not being a body to which the Local Government and Housing Act 1989 s 15 applies by virtue of Sch 1 para 2: Sch 1 para 4(1) (definition amended by the Education Act 1993 s 307(1), (3), Sch 19 para 157, Sch 21 Pt II and Children Act 2004 s 55(4), s 64 Sch 5, Pt 4). For the purposes of Sch 1, 'ordinary sub-committee', in relation to any relevant authority, means any sub-committee of the authority's social services committee or any other sub-committee of that authority appointed under the Local Government Act 1972 s 102(1)(c) (see PARA 371) by an ordinary committee of that authority: Local Government and Housing Act 1989 Sch 1 para 4(2). For these purposes, 'advisory committee', in relation to a relevant authority, means a committee appointed by the authority under the Local Government Act 1972 s 102(4) (see PARA 371): Sch 1 para 4(1). For these purposes, 'seat', in relation to a body to which s 15 applies, means such a position as a member of that body as: (i) entitles the person holding the position to vote at meetings of the body on any question which falls to be decided at such a meeting; and (ii) in the case of a position as member of an advisory committee or of a sub-committee appointed by an advisory committee, is not a position which the authority or committee has determined must be filled by the appointment of a person who is not a member of the authority: Sch 1 para 4(1). References in Sch 1 para 4 to 'voting' include references to making use of a casting vote: Sch 1 para 4(3). As to the appointment of committees and sub-committees see PARA 371. As to votes generally see PARA 623.

Regulations under the Local Government and Housing Act 1989 s 15 or under Sch 1 may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State or the Welsh Ministers consider appropriate: Sch 1 para 5. As to the regulations that have been made see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (amended by SI 1991/1398; SI 1993/1339; SI 1998/1918; SI 1999/500). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 It was the duty of a relevant authority having power from time to time to make appointments to a body to which these provisions apply to review the representation of different political groups on that body where the members of the authority were divided into different political groups at the time when these provisions came into force, as soon as practicable after that time: Local Government and Housing Act 1989 s 15(1)(a). Section 15 came into force on 16 January 1990 in so far as it conferred power to make orders, regulations or determinations, to give or make directions, to specify matters, to require information, to impose conditions or to give guidance or approvals or makes provision with respect to the exercise of any such power; and for all other purposes on 1 August 1990: see the Local Government and Housing Act 1989 (Commencement No 3) Order 1989, SI 1989/2445; and the Local Government and Housing Act 1989 (Commencement No 9 and Saving) Order 1990, SI 1990/1552.

4 In pursuance of the Local Government Act 1972 s 99, Sch 12 para 1: see PARA 628.

5 Local Government and Housing Act 1989 s 15(1)(b).

6 Local Government and Housing Act 1989 s 15(1)(d). The division referred to in the text is one under s 15(1)(a) (see note 3) or s 15(1)(b) (see the text and notes 4-5).

7 Local Government and Housing Act 1989 s 15(1)(e). As to the regulations that have been made see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (as amended: see note 2).

8 Local Government and Housing Act 1989 s 15(2)(b). There was a duty to review the representation of different political groups on the body, where the members of the authority were divided into different political groups at the time when these provisions came into force, as soon as practicable after that time: see s 15(2)(a). As to the regulations that have been made see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (as amended: see note 2).

9 Local Government and Housing Act 1989 s 15(3).

10 Local Government and Housing Act 1989 s 15(4)(a). The duty referred to in the text is a duty under s 15(3): see the text to note 9.

11 Local Government and Housing Act 1989 s 15(4)(b).

12 Local Government and Housing Act 1989 s 15(4).

13 Local Government and Housing Act 1989 s 15(5)(a).

14 Local Government and Housing Act 1989 s 15(5)(b). For these purposes, 'membership', in relation to a relevant authority, means the number of persons who are for the time being members of the authority, disregarding any person who is treated as continuing to be a member of the authority by virtue of the Local Government Act 1972 s 3(3) (see PARA 144): Local Government and Housing Act 1989 Sch 1 para 4(1).

15 Local Government and Housing Act 1989 s 15(5)(c).

16 Local Government and Housing Act 1989 s 15(5)(d). Where any relevant authority or committee of a relevant authority is required, in determining the allocation to different political groups of seats on a body to which these provisions apply, to give effect to the principles specified in s 15(5): (1) any seats which, in accordance with provision made by virtue of s 13(5) (see PARA 374) are to be or may be filled by the appointment of persons who are not members of the authority, are to be taken into account for the purpose of determining how many seats constitute a majority of the seats on a body mentioned in s 13(5); but (2) that authority or committee must, in making that determination, disregard for all other purposes any seats which in accordance with any such provision are to be or may be so filled: s 15(6). For the purposes of s 15(6), a seat on an advisory committee of a relevant authority or on a sub-committee appointed by such an advisory committee must not be treated as one which may be so filled unless the authority has determined that it must be so filled: s 15(6).

17 Ie for the purposes of the Local Government and Housing Act 1989 s 15.

18 Local Government and Housing Act 1989 Sch 1 para 3(1)(a).

19 Local Government and Housing Act 1989 Sch 1 para 3(1)(b).

20 Local Government and Housing Act 1989 Sch 1 para 3(1)(c).

21 Local Government and Housing Act 1989 Sch 1 para 3(1)(d). Regulations under Sch 1 para 3 may make provision modifying the provisions of s 15 (see the text and notes 1-16) and s 16 (see PARA 376) in relation to any case in which some of the members of a relevant authority fall to be treated as members of one or more political groups and the others do not: Sch 1 para 3(2). As to the regulations that have been made see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (as amended: see note 2).

UPDATE

375 Duty to allocate seats to political groups

NOTE 1--Definition of 'relevant authority' in Local Government and Housing Act 1989 Sch 1 para 4(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81.

NOTE 2--Local Government and Housing Act 1989 Sch 1 para 2(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81.

Local Government and Housing Act 1989 Sch 1 para 2(1) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

As from a day to be appointed Local Government and Housing Act 1989 Sch 1 para 2(1) further amended: Marine and Coastal Access Act 2009 Sch 14 para 15.

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376. Duty to give effect to allocations.

Where any relevant authority¹ or any committee² of a relevant authority has determined the allocation to different political groups of the seats³ on a body⁴, it is the duty of that authority or committee so to exercise its power to make appointments to that body as to give effect⁵ to such wishes about who is to be appointed to the seats on that body which are allocated to a particular political group as are expressed by that group⁶. Where any person has been appointed, otherwise than for a fixed term, to a body⁷ and that appointment was made, in pursuance of these provisions, in accordance with the wishes of a political group⁸, then, so long as that person's seat continues to be allocated to that group, the authority or committee which made the appointment is to act in accordance with the wishes of that group in determining whether and when to terminate the appointment⁹. These provisions apply in relation to an allocation of seats to different political groups whether or not that allocation is made in pursuance of any duty to allocate seats to political groups¹⁰.

The Secretary of State and the Welsh Ministers¹¹ may by regulations make provision¹²: (1) as to the circumstances in which the members of a relevant authority are to be treated as divided into different political groups¹³; (2) as to the persons who are to be treated as members of such a group and as to when a person is to be treated as having ceased to be a member of such a group¹⁴; (3) requiring the question whether a person is or is not a member of a political group to be determined in such manner as may be provided for by or under the regulations¹⁵; (4) specifying the manner in which, and times at which, the wishes of such a group are to be expressed and the consequences of a failure by such a group to express its wishes¹⁶.

1 As to the meaning of 'relevant authority' see PARA 375 note 1.

2 As to the appointment of committees and sub-committees see PARA 371.

3 As to the meaning of 'seat' see PARA 375 note 2.

4 I.e. a body to which the Local Government and Housing Act 1989 s 15 applies: see PARA 375 note 2.

5 I.e. as soon as practicable after the determination and, if a vacancy subsequently occurs on that body, as soon as practicable after the occurrence of the vacancy: see the Local Government and Housing Act 1989 s 16(1)(a), (b).

6 Local Government and Housing Act 1989 s 16(1).

7 Local Government and Housing Act 1989 s 16(2)(a).

8 Local Government and Housing Act 1989 s 16(2)(b).

9 Local Government and Housing Act 1989 s 16(2). The proceedings of a specified body are not invalidated by any defect by virtue of s 16 or s 15 (see PARA 375) in the appointment of any person to that body: s 16(3).

10 Local Government and Housing Act 1989 s 16(4). The duty to allocate seats to political groups referred to in the text is the duty under s 15: see PARA 375.

11 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

12 Ie for the purposes of the Local Government and Housing Act 1989 s 16.

13 Local Government and Housing Act 1989 s 15(7), Sch 1 para 3(1)(a).

14 Local Government and Housing Act 1989 Sch 1 para 3(1)(b).

15 Local Government and Housing Act 1989 Sch 1 para 3(1)(c).

16 Local Government and Housing Act 1989 Sch 1 para 3(1)(d). Regulations under Sch 1 para 3 may make provision modifying the provisions of s 15 (see PARA 375) and s 16 (see the text and notes 1-10) in relation to any case in which some of the members of a relevant authority fall to be treated as members of one or more political groups and the others do not: Sch 1 para 3(2). Regulations under Sch 1 may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate: Sch 1 para 5. As to the regulations that have been made under Sch 1 para 3 see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (amended by SI 1991/1398; SI 1993/1339; SI 1998/1918; SI 1999/500).

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377. Exceptions to and extensions of political balance requirements.

The provisions relating to the duty to allocate seats to political groups¹ and the duty to give effect to such allocations² do not apply in relation to appointments by a relevant authority³ or committee⁴ of a relevant authority to any body in so far as different provision is made by arrangements approved by the authority or committee in such manner as may be prescribed by regulations made by the Secretary of State or the Welsh Ministers⁵, and without any member of the authority or committee voting against them⁶. The Secretary of State and the Welsh Ministers may by regulations make such provision as he or they think fit for the purpose of securing what appears to him or them to be the appropriate representation of different political groups on certain sub-committees⁷.

1 Ie under the Local Government and Housing Act 1989 s 15: see PARA 375. As to the meaning of 'seat' see PARA 375 note 2.

2 Ie under the Local Government and Housing Act 1989 s 16: see PARA 376.

3 As to the meaning of 'relevant authority' see PARA 375 note 1.

4 As to the appointment of committees and sub-committees see PARA 371.

5 Local Government and Housing Act 1989 s 17(1)(a). Regulations under s 17 may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate: s 15(7), Sch 1 para 5. As to the regulations that have been made see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (amended by SI 1991/1398; SI 1993/1339; SI 1998/1918; SI 1999/500). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

Arrangements approved under the Local Government and Housing Act 1989 s 17(1) in relation to any body do not affect any duty imposed by virtue of s 15(1)(c), (d), (e) or s 15(2) (see PARA 375) on a relevant authority or

committee to review the representation of different political groups on that body; and, accordingly, such arrangements cease to have effect when any such duty arises: s 17(2).

6 Local Government and Housing Act 1989 s 17(1)(b).

7 Local Government and Housing Act 1989 s 17(3). The sub-committees referred to in the text are sub-committees to which appointments may be made by bodies to which s 15 applies (see PARA 375), but which are not themselves such bodies: s 17(4). Without prejudice to the generality of subsection (3) regulations may contain provision applying, with or without modifications, any provision made by or under s 15 (see PARA 375), s 16 (see PARA 376), s 17(1), (2) (see the text and notes 1-6) or Sch 1: s 17(5).

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(iii) Single Member Functions

378. Single member functions.

Arrangements may be made¹ for the discharge of any function² of a local authority³ by a member of the authority, to the extent that the function is exercisable in relation to the electoral division or ward for which the member is elected⁴. In the case of a function of a local authority operating executive arrangements⁵ which is the responsibility of the executive:

- 315 (1) it is for the senior executive member⁶ to make the arrangements⁷; and
- 316 (2) arrangements⁸ may not permit the discharge of the function by a member of the executive if that member is the senior member who already has power⁹ to discharge functions¹⁰.

In any other case it is for the local authority to make the arrangements¹¹.

No arrangements may be made for the discharge by a member of a local authority of any function: (a) which is, or to the extent that it is, specified in an order made by the Secretary of State; or (b) in any manner or in circumstances so specified¹².

Any arrangements made under the above provisions with respect to the discharge of any function are not to prevent its discharge by the person who made the arrangements or in any other way in which the function is permitted to be discharged by or under any enactment¹³.

Where a member of a local authority discharges any function of the authority by virtue of the above provisions that member must ensure that a record is made in writing of any decision made or action in connection with the discharge of that function and within one month of the date on which the decision is made, or action is taken, provide the record to the authority¹⁴.

1 le in accordance with the Local Government and Public Involvement in Health Act 2007 s 236.

2 As to functions which are the responsibility of an executive see PARA 324. Any reference to the discharge of any function includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of that function: Local Government and Public Involvement in Health Act 2007 s 236(8).

3 As to the meaning of 'local authority' see PARA 23.

4 Local Government and Public Involvement in Health Act 2007 s 236(1).

5 As to the meaning of 'executive arrangements' see PARA 303; definition applied by the Local Government and Public Involvement in Health Act 2007 s 236(7).

6 As to the senior executive member see PARA 357; definition applied by the Local Government and Public Involvement in Health Act 2007 s 236(7).

7 Local Government and Public Involvement in Health Act 2007 s 236(2)(a).

8 le under the Local Government and Public Involvement in Health Act 2007 s 236.

9 By virtue of arrangements under the Local Government Act 2000 s 14(2)(b)(ii) (see PARA 357). As to the discharge of functions by the Senior Executive Member see PARA 357.

10 Local Government and Public Involvement in Health Act 2007 s 236(2)(b).

11 Local Government and Public Involvement in Health Act 2007 s 236(3).

12 Local Government and Public Involvement in Health Act 2007 s 236(4).

13 Local Government and Public Involvement in Health Act 2007 s 236(5).

14 Exercise of Functions by Local Councillors (Written Records) Regulations 2009, SI 2009/352, reg 2.

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(iv) Officers

379. Discharge of functions by officers.

A local authority¹ may arrange for the discharge of any of its functions² by an officer³ of the authority⁴. Where any functions of a local authority may be discharged by a committee⁵, then, unless the local authority otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the authority; and where any functions of a local authority may be discharged by a sub-committee of the authority, then, unless the local authority or the committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the authority⁶. However, any arrangements so made do not prevent the authority or committee by whom the arrangements are made from exercising those functions⁷.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the discharge of functions see PARA 370. As to local authority functions see PARA 579 et seq.

3 As to officers generally see PARA 425 et seq. As to whether a decision has been taken by a properly delegated officer see *R v Southwark London Borough Council, ex p Bannerman* [1990] RVR 33, 22 HLR 459.

4 See the Local Government Act 1972 s 101(1)(a); and PARA 370.

5 As to committees and sub-committees see PARA 371 et seq.

6 See the Local Government Act 1972 s 101(2); and PARA 370.

7 See the Local Government Act 1972 s 101(4); and PARA 370. In the event of conflicting decisions, validity may depend on the order in which persons affected were notified: see *R v Yeovil Borough Council, ex p Trustees of Elim Pentecostal Church, Yeovil* (1971) 23 P & CR 39, 70 LGR 142, DC.

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(v) Joint Arrangements

380. Joint arrangements.

A local authority¹ may arrange for the discharge of any of its functions² by any other local authority³. Where arrangements are in force for the discharge of any functions of a local authority by another local authority, then, subject to the terms of the arrangements, that other authority may arrange for the discharge of those functions by one of its committees, sub-committees⁴ or officers⁵.

A local authority may enter into an agreement⁶ with another local authority for the placing at the disposal of the latter for the purposes of its functions, on such terms as may be provided by the agreement, of the services of officers⁷ employed by the former, but may not enter into any such agreement with respect to any officer without consulting him⁸.

Two or more local authorities may discharge any of their functions jointly and, where arrangements are in force for them to do so: (1) they may also arrange for the discharge of those functions by a joint committee of theirs or by an officer of one of them⁹; and (2) any enactment relating to those functions or the authorities by whom or the areas in respect of which they are to be discharged are to have effect subject to all necessary modifications in their application in relation to those functions and the authorities by whom and the areas in respect of which, whether in pursuance of the arrangements or otherwise, they are to be discharged¹⁰. Such arrangements by two or more local authorities with respect to the discharge of any of their functions cease to have effect with respect to that function if, or to the extent that, the function becomes the responsibility of an executive of any of the authorities¹¹.

The expenses incurred by a joint committee of two or more local authorities¹² are to be defrayed by those authorities in such proportions as they may agree or in case of disagreement as may be determined: (a) in any case in which those authorities are the councils of parishes or groups of parishes situated in the same district, by the district council¹³; (b) in any case in which those authorities are the councils of communities or groups of communities situated in the same principal area, by the council of that area¹⁴; and (c) in any other case, by a single arbitrator agreed on by the appointing authorities or, in default of agreement, appointed by the Secretary of State or the Welsh Ministers¹⁵.

A local authority may appoint a committee, and two or more local authorities may join in appointing a committee, to advise the appointing authority or authorities on any matter relating to the discharge of its or their functions¹⁶. Where executive arrangements are in operation, a committee may also be appointed to advise any executive of the authority or authorities, or a committee or member of that executive¹⁷. Any such committee may consist of such persons, whether members of the appointing authority or authorities or not, appointed for such term as may be determined by the appointing authority or authorities¹⁸; and a committee may appoint one or more sub-committees to advise the committee¹⁹.

Local authorities appointing a joint committee may make standing orders with respect to the quorum, proceedings and place of meeting of the joint committee, including any sub-committee²⁰.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the discharge of functions see PARA 370. As to local authority functions see PARA 579 et seq.

3 See the Local Government Act 1972 s 101(1)(b); and PARA 370. A local authority must not make arrangements under s 101 for the discharge of any of its functions under the Diseases of Animals Act 1950 (repealed: see now the Animal Health Act 1981; and **ANIMALS**) by any other local authority: Local Government Act 1972 s 101(7). Section 101(7) does not apply to arrangements as between principal councils in Wales: s 101(7A) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 26). An agreement under the Local Government Act 1972 s 101 whereby one authority informally pays another to administer certain services can be terminated on reasonable notice: see *R v Rossendale Borough Council, ex p Whitworth Town Council* (1997) 96 LGR 507. As to principal councils in Wales see PARA 37 et seq.

4 As to committees and sub-committees see PARA 371 et seq.

5 See the Local Government Act 1972 s 101(3); and PARA 370. The provisions of s 101(2) (see PARA 370) are to apply in relation to the functions referred to in the text as they apply in relation to the authority's own functions: see s 101(3). As to the discharge of functions by officers see PARA 379.

6 Without prejudice to any powers exercisable apart from the Local Government Act 1972 s 113, a local authority may enter into an agreement with the Health Protection Agency, the Local Health Board, Special Health Authority, Primary Care Trust, NHS trust or NHS Foundation Trust: (1) for the placing at the disposal of the Health Protection Agency, the Local Health Board, Special Health Authority, Primary Care Trust, NHS trust or NHS Foundation Trust for the purposes of its functions, on such terms as may be provided by the agreement, of the services of officers employed by the local authority; (2) for the placing at the disposal of the local authority for the purposes of its functions, on such terms as may be provided by the agreement, of the services of officers employed by the Health Protection Agency, the Local Health Board, Special Health Authority, Primary Care Trust, NHS trust or NHS Foundation Trust: s 113(1A) (added by the National Health Service Reorganisation Act 1973 ss 57, 58, Sch 4 para 151; and amended by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 17, 18, the Health Protection Agency Act 2004 s 11(1), Sch 3 para 4(a)-(c); and SI 2000/90; SI 2007/961). However, a local authority may not enter into an agreement in pursuance of head (1) above in respect of any officer without consulting him: Local Government and Housing Act 1989 s 113(1A) (as so added). An officer whose services are placed at the disposal of a local authority in pursuance of the Local Government Act 1972 s 113(1A) is to be treated as an officer of the authority for the purposes of any enactment relating to the discharge of local authority functions: s 113(3) (added by the National Health Service Reorganisation Act 1973 Sch 4 para 151). For the purposes of the Local Government Act 1972 s 113(1A), 'Local Health Board' means a Local Health Board established under the National Health Service (Wales) Act 2006 s 1 (see **HEALTH SERVICES** vol 54 (2008) PARA 74), 'NHS trust' means a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see **HEALTH SERVICES** vol 54 (2008) PARA 155) and 'primary care trust' means a primary care trust established under the National Health Service Act 2006 s 18 (see **HEALTH SERVICES** vol 54 (2008) PARA 111); Local Government Act 1972 s 113(4) (added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 13(b); and amended by SI 2007/961). As to the Health Protection Agency see **HEALTH SERVICES** vol 54 (2008) PARA 213 et seq. As to special health authorities see **HEALTH SERVICES** vol 54 (2008) PARA 136 et seq. As to NHS Foundation Trusts see **HEALTH SERVICES** vol 54 (2008) PARA 174 et seq. As to the meaning of 'local authority' see also PARA 462 note 3.

7 As to officers generally see PARA 425 et seq.

8 Local Government Act 1972 s 113(1). For superannuation purposes, service rendered by an officer of a local authority whose services are placed at the disposal of another local authority in pursuance of s 113 is service rendered to the authority by whom he is employed, but any such officer is to be treated for the purposes of any enactment relating to the discharge of local authorities' functions as an officer of that other local authority: s 113(2).

9 Local Government Act 1972 s 101(5)(a). The provisions of s 101(2) (see PARA 370) are to apply in relation to the functions referred to in the text as they apply in relation to the authority's own functions: see s 101(5)(a).

10 Local Government Act 1972 s 101(5)(b).

11 Local Government Act 1972 s 101(5A) (s 101(5A), (5B) added by SI 2001/1517; SI 2002/803). The Local Government Act 1972 s 101(5A) does not affect arrangements made by virtue of the Local Government Act 2000 s 20 (see PARA 362); Local Government Act 1972 s 101(5B) (as so added). As to executive arrangements see PARA 303. As to the discharge of functions under executive arrangements see PARA 324 et seq.

12 Is whether appointed or established under the Local Government Act 1972 Pt V (ss 101-110) or any other enactment.

13 Local Government Act 1972 s 103(a) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 27). As to areas and authorities in England see PARA 24 et seq. As to the meaning of 'grouped' see PARA 29.

14 Local Government Act 1972 s 103(aa) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 27). As to areas and authorities in Wales see PARA 37 et seq.

15 Local Government Act 1972 s 103(b). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

16 See the Local Government Act 1972 s 102(4); and PARA 371.

17 See the Local Government Act 1972 s 102(4); and PARA 371.

18 See the Local Government Act 1972 s 102(4)(a); and PARA 371.

19 See the Local Government Act 1972 s 102(4)(b); and PARA 371. See also s 102(4A); and PARA 371.

20 See the Local Government Act 1972 s 106; and PARA 373. The provisions of s 99, Sch 12 paras 39-43 (see PARA 622 et seq) relating to meetings of local authorities apply in relation to joint committees and sub-committees: Sch 12 para 44(1).

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(vi) Parishes

381. Arrangements for functions in parishes.

In a parish¹ not having a separate parish council the parish meeting² may, subject to any provisions made by a grouping order³ and subject to such conditions as the meeting may impose, arrange for the discharge of any of its functions by a committee of local government electors for the parish⁴. However, any such arrangement does not prevent the parish meeting from exercising those functions⁵.

On the application of the parish meeting of a parish not having a separate parish council, the district council⁶ may, subject to the provisions of the grouping order if the parish is grouped with any other parish, by order⁷ confer on the parish meeting any functions of a parish council⁸.

1 As to parishes see PARA 27 et seq.

2 As to parish meetings see PARAS 635-640.

3 As to grouping of parishes see PARA 29.

4 Local Government Act 1972 s 108. As to the meaning of 'local government elector' see PARA 127 note 2.

5 Local Government Act 1972 s 108.

6 As to areas and authorities in England see PARA 24 et seq.

7 Two copies of every order made under the Local Government Act 1972 s 109 must be sent by the district council to the Secretary of State: s 109(2). As to the Secretary of State see PARA 96.

8 Local Government Act 1972 s 109(1).

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(vii) Decentralisation and Joint Working Arrangements in Wales

382. Decentralisation schemes.

Under the Local Government (Wales) Act 1994, provision was made for the preparation of decentralisation schemes¹, and for the implementation of approved schemes². A 'decentralisation scheme', in relation to a council, means a scheme which provides for the exercise of specified functions of the council to be discharged by an area committee³ of the council established for the purposes of the scheme⁴.

1 See the Local Government (Wales) Act 1994 s 27. Applications and directions relating to decentralisation schemes had to be made by 1 January 1996 and 1 July 1996 respectively: see s 27(7).

2 See the Local Government (Wales) Act 1994 s 28.

3 See the Local Government (Wales) Act 1994 s 27(6). As to area committees see PARA 384.

4 See the Local Government (Wales) Act 1994 s 27(3).

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383. Safeguards for area committees.

Where an area committee¹ has been established by a council² in accordance with an approved decentralisation scheme: (1) the council must not, except with the agreement of the committee, abolish the committee or alter any arrangements in force with respect to the committee which were made in accordance with the scheme as originally approved or which have subsequently been agreed with the committee³; and (2) nothing in the statutory provisions relating to the power of local authorities to exercise functions otherwise discharged by committees⁴ is to be taken to authorise the council to exercise any functions which are to be discharged by the committee, except as provided for by the scheme⁵. Every decentralisation scheme had to include provision, to be given effect to by the standing orders⁶ of the council concerned, for the majority required in order for any suspending resolution⁷ to be passed⁸ to be such majority greater than a simple majority as may be specified in the scheme⁹.

1 I.e. a committee established for the purposes of a decentralisation scheme: see PARA 382. As to the meaning of 'decentralisation scheme' see PARA 382. As to area committees see PARA 384.

2 As to areas and authorities in Wales see PARA 37 et seq.

3 Local Government (Wales) Act 1994 s 29(1)(a).

4 I.e. the Local Government Act 1972 s 101(4): see PARA 370.

5 Local Government (Wales) Act 1994 s 29(1)(b).

6 As to standing orders see PARA 620.

7 For these purposes, 'suspending resolution' in relation to a decentralisation scheme means a resolution to suspend any of the arrangements in force with respect to an area committee established in accordance with the scheme: Local Government (Wales) Act 1994 s 29(3).

8 As to decisions by vote see PARA 623.

9 See the Local Government (Wales) Act 1994 s 29(2).

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384. Area committees.

The following provisions apply where an area committee¹ has been established by a council² in accordance with an approved decentralisation scheme³. Every person who is a member of the council for an electoral division⁴ which falls within the area for which the committee is established is entitled to be appointed to the committee at his request⁵. In addition, the committee may appoint additional persons, including members of the council who are not entitled to membership of the committee under the foregoing criteria⁶, as members of the committee⁷. No other persons are eligible for appointment to the committee⁸.

A co-opted member⁹ of an area committee is not entitled to vote at any meeting¹⁰ of the committee on any question which falls to be decided at that meeting¹¹.

The area committee may, if authorised to do so by the decentralisation scheme, arrange for the discharge of any of its functions by a local authority¹² other than the authority who made the scheme¹³, by a sub-committee or by an officer of the authority¹⁴.

1 I.e. a committee established for the purposes of a decentralisation scheme: see para 382. As to the meaning of 'decentralisation scheme' see para 382.

2 As to areas and authorities in Wales see PARA 37 et seq.

3 Local Government (Wales) Act 1994 s 30(1). The provisions of the Local Government Act 1972 with respect to arrangements for the discharge of functions by committees of local authorities and sub-committees, and the appointment of such committees and sub-committees, are subject to the Local Government (Wales) Act 1994 s 30 and s 31 (see PARA 385): s 30(2). As to the discharge of functions under the Local Government Act 1972 see PARA 370 et seq. As to committees and sub-committees see PARA 371 et seq.

4 As to electoral divisions see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 73.

5 Local Government (Wales) Act 1994 s 30(3).

6 I.e. under the Local Government (Wales) Act 1994 s 30(3): see the text and notes 4-5.

7 Local Government (Wales) Act 1994 s 30(4). Where a direction has been given under the Education Act 1996 s 499 (power to direct appointment of members of certain committees) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50) which applies to the committee and can only be complied with by the appointment of one or more additional members to the committee, it is the duty of the committee to exercise its powers of appointment to secure compliance with the direction: Local Government (Wales) Act 1994 s 30(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 123).

The Local Government Act 1972 s 102(3) (power to include persons who are not members of the local authority concerned) (see PARA 371) and the Local Government and Housing Act 1989 s 15 (political balance on committees) (see PARA 375) do not apply in relation to membership of the committee: Local Government (Wales) Act 1994 s 30(11). The Local Government Act 1972 s 102(2) (number of members of committee and terms of office) (see PARA 371) does not apply in relation to the committee: Local Government (Wales) Act 1994 s 30(13).

8 Local Government (Wales) Act 1994 s 30(5).

9 For the purposes of the Local Government (Wales) Act 1994 s 30, 'co-opted member', in relation to an area committee, means any member appointed by the committee under s 30(4) (see the text and notes 6-7): s 30(6). The term of office of each of the co-opted members of an area committee is to be fixed by the committee: s 30(12).

10 As to voting see PARA 623. As to meetings and proceedings in general see PARA 619 et seq.

11 Local Government (Wales) Act 1994 s 30(8). However, nothing in s 30(8) is to prevent the appointment of a person, in compliance with a direction under the Education Act 1996 s 499 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50), as a voting member of an area committee: Local Government (Wales) Act 1994 s 30(9) (amended by the Education Act 1996 s 582(1), Sch 37 para 123). In the case of an appointment made in order to comply with a direction under the Education Act 1996 s 499 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50), the committee is to exercise its powers under s 30(12) (see note 9) subject to any provision of the direction relating to terms of office: Local Government (Wales) Act 1994 s 30(14) (amended by the Education Act 1996 s 582(1), Sch 37 para 123).

12 As to the meaning of 'local authority' see PARA 23.

13 See the Local Government Act 1972 s 101(1); and the Local Government (Wales) Act 1994 s 30(10)(a). See also PARA 370.

14 See the Local Government Act 1972 s 101(2); and the Local Government (Wales) Act 1994 s 30(10)(b). See also PARA 370. As to the discharge of functions by officers see PARA 379.

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385. Sub-committees of area committees.

The members of a sub-committee of an area committee¹ are to be appointed by the area committee from among persons who are members of the area committee² or entitled to be members of the area committee³. A sub-committee may appoint additional persons⁴, including persons who are not members of the area committee concerned, as members of the sub-committee⁵. No other persons are eligible for appointment to a sub-committee⁶.

A co-opted member⁷ of a sub-committee is not entitled to vote at any meeting of the sub-committee on any question which falls to be decided at that meeting⁸.

The number of members of a sub-committee and their terms of office are to be fixed by the area committee concerned⁹.

1 ie a committee established for the purposes of a decentralisation scheme: see PARA 382. As to the meaning of 'decentralisation scheme' see PARA 382. As to area committees see PARA 384.

2 The members of the area committee referred to in the text are those appointed under the Local Government (Wales) Act 1994 s 30(3): see PARA 384.

3 Local Government (Wales) Act 1994 s 31(1), (2).

4 ie subject to the Local Government (Wales) Act 1994 s 31(10): see the text to note 9.

5 Local Government (Wales) Act 1994 s 31(3). Where a direction has been given under the Education Act 1996 s 499 (power to direct appointment of members of certain committees) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50) which applies to a sub-committee, it is the duty of the area committee concerned and the sub-committee to secure compliance with the direction: Local Government (Wales) Act 1994 s 31(6) (amended by the Education Act 1996 s 582(1), Sch 37 para 124).

The Local Government Act 1972 s 102(3) (power to include persons who are not members of the local authority concerned) (see PARA 371) and the Local Government and Housing Act 1989 s 15 (political balance on

committees) (see PARA 375) are not to apply in relation to membership of a sub-committee: Local Government (Wales) Act 1994 s 31(9).

6 Local Government (Wales) Act 1994 s 31(4).

7 For the purposes of the Local Government (Wales) Act 1994 s 31, 'co-opted member', in relation to a sub-committee, means any member of the sub-committee appointed under s 31(3) (see the text and notes 4-5): s 31(5).

8 Local Government (Wales) Act 1994 s 31(7). However, nothing in s 31(7) is to prevent the appointment of a person in compliance with a direction under the Education Act 1996 s 499 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50) as a voting member of a sub-committee: Local Government (Wales) Act 1994 s 31(8) (amended by the Education Act 1996 s 582(1), Sch 37 para 124). In the case of an appointment made in order to comply with a direction under the Education Act 1996 s 499 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 50), the area committee is to exercise its powers under s 31(10) (see the text to note 9) subject to any provision of the direction relating to terms of office: Local Government (Wales) Act 1994 s 31(12) (amended by the Education Act 1996 s 582(1), Sch 37 para 124).

9 Local Government (Wales) Act 1994 s 31(10). The Local Government Act 1972 s 102(2) (number of members of committee and terms of office) (see PARA 371) does not apply in relation to the sub-committee: Local Government (Wales) Act 1994 s 31(11).

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386. Joint working arrangements and joint authorities.

Before 31 March 1999 where it appeared to the Secretary of State¹ that particular functions of a new principal council should be discharged in accordance with arrangements entered into by that council and one or more other such councils in relation to the exercise of those functions but that satisfactory arrangements for the exercise of those functions will not be, or are unlikely to be, in force by the specified time² he had power to give a direction to the councils concerned³ requiring them to make specified⁴ arrangements in relation to the exercise of specified functions⁵. The arrangements specified could, in particular, be or include arrangements for the joint exercise of functions⁶. In considering whether to give a direction, the Secretary of State was to have regard, in particular, to the desirability of the functions in question being discharged effectively and in a financially efficient manner⁷.

Such a direction remains in force: (1) until it is withdrawn by a notice in writing given by the Secretary of State to the councils concerned⁸; or (2) where a period is specified in the direction during which the direction is to have effect, and the direction has not been withdrawn by the Secretary of State, until the end of that period⁹. A direction may at any time while it is in force be varied by the Secretary of State¹⁰.

Where a direction was given by the Secretary of State in relation to joint working arrangements¹¹, but it appeared to him that it had proved impracticable to implement the arrangements required by the direction¹², or that the required arrangements had been implemented but were not working satisfactorily¹³ or that the required arrangements were, or had been, working satisfactorily but were unlikely to continue to work satisfactorily¹⁴, he could by order establish a body to act for the areas of the councils to which the direction related¹⁵. A body so established is known as a joint authority¹⁶.

A joint authority consists of such number of members as are determined by the order establishing it¹⁷. Those members are to be appointed by the councils to which the order relates from among their members, each council being entitled to appoint such number of members as may be specified in the order¹⁸. Where at any time the number of members of a joint authority

is less than the required number, the Secretary of State may, if he is satisfied that the councils concerned have had a reasonable opportunity to make the necessary appointment or appointments: (a) give such direction to the councils concerned or to any of them as he considers appropriate¹⁹; and (b) appoint such members, from among such persons as he considers appropriate, as may be required to complete the membership of the authority²⁰.

The joint authority is to discharge the functions to which the direction relates, from a date specified in the order establishing the authority until such alternative arrangements for the exercise of the functions as appear to the Secretary of State to be satisfactory are brought into force²¹.

1 As to the Secretary of State see PARA 96.

2 Ie 1 April 1996: see the Local Government (Wales) Act 1994 s 33(1)(b).

3 Ie Welsh Principal Councils. As to the meaning of 'principal council' see PARA 23.

4 For these purposes, 'specified', in relation to a direction, means specified in the direction: Local Government (Wales) Act 1994 s 33(3).

5 Local Government (Wales) Act 1994 s 33(1).

6 Local Government (Wales) Act 1994 s 33(2). As to joint arrangements see also PARA 380.

7 Local Government (Wales) Act 1994 s 33(4).

8 Local Government (Wales) Act 1994 s 33(5)(a). See note 9.

9 Local Government (Wales) Act 1994 s 33(5)(b). However, nothing in s 33(5) is to be taken to affect the power of the Secretary of State to give a further direction under s 33(1): s 33(7).

10 Local Government (Wales) Act 1994 s 33(6). However, nothing in s 33(6) is to be taken to affect the power of the Secretary of State to give a further direction under s 33(1): s 33(7).

11 Ie under the Local Government (Wales) Act 1994 s 33.

12 Local Government (Wales) Act 1994 s 34(1)(a). See note 15.

13 Local Government (Wales) Act 1994 s 34(1)(b). See note 15.

14 Local Government (Wales) Act 1994 s 34(1)(c). See note 15.

15 Local Government (Wales) Act 1994 s 34(1). The power conferred on the Secretary of State by s 34(1) cannot be exercised after 31 March 1999 but an order under s 34(1) which was made before that date is to continue in force until revoked by the Secretary of State: s 34(7).

An order under s 34 could: (1) provide for the joint authority concerned to be treated, for all purposes or only for the purposes of such enactments as may be prescribed, as a new principal council; (2) provide for prescribed enactments relating to principal councils as may be prescribed (either generally or with reference to specified enactments) to have effect in relation to the joint authority concerned subject to prescribed modifications; (3) make provision enabling the Secretary of State to require the joint authority concerned to submit to him a scheme for winding itself up and for the transfer to any of the councils for whose areas the joint authority was established of any of the joint authority's property, rights and liabilities or of any functions which it carried out: s 34(8). The Secretary of State could by order provide: (a) for excluding any functions, or any functions in any area, from those falling to be carried out by a joint authority; and (b) for giving effect, with or without modifications, to any scheme submitted to him under a provision made by virtue of s 34(8) for the dissolution of a joint authority: s 34(9). The power to make an order under s 34 included, in particular, power to make provision for the transfer of property, rights and liabilities: s 34(10).

16 Local Government (Wales) Act 1994 s 34(2). The body could be established as a body corporate: see s 34(2).

17 Local Government (Wales) Act 1994 s 34(3).

18 Local Government (Wales) Act 1994 s 34(4).

- 19 Local Government (Wales) Act 1994 s 34(5)(a).
- 20 Local Government (Wales) Act 1994 s 34(5)(b).
- 21 Local Government (Wales) Act 1994 s 34(6).

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(5) CO-OPERATION AND LOCAL INVOLVEMENT

(i) Local Area Agreements and Community Strategies, etc

387. Local area agreements.

When the Secretary of State so directs¹, a responsible local authority² must prepare and submit to him a draft local area agreement specifying:

- 317 (1) local improvement targets³;
- 318 (2) in relation to each local improvement target, the persons to whom the target is to relate⁴; and
- 319 (3) the period for which the local area agreement is to have effect⁵.

In preparation the responsible local authority must consult each partner authority⁶ and such other persons as appear to it to be appropriate⁷. It must also co-operate with each partner authority in determining the local improvement targets relating to the partner authority which are to be specified in the draft local area agreement⁸.

Where a draft of a local area agreement has been submitted to him⁹, the Secretary of State may by notice in writing to the responsible local authority approve the draft or require the responsible local authority to modify the draft¹⁰. Where the Secretary of State approves a draft local area agreement a local area agreement in the form of the draft has effect for the area of the responsible local authority for the period specified¹¹ in the local area agreement¹².

1 As to the Secretary of State see PARA 96. A direction under the Local Government and Public Involvement in Health Act 2007 s 106(1) may specify the date by which a draft of a local area agreement must be submitted to the Secretary of State: s 106(5). A direction under s 106(1) may be varied or revoked: s 106(6).

2 As to the meaning of 'local authority' see PARA 23. For the purposes of the Local Government and Public Involvement in Health Act 2007 Pt 5, Ch 1 (ss 103-118), each of the following is a responsible local authority: a county council in England; a district council in England, other than a council for a district in a county for which there is a county council; a London borough council; the Council of the Isles of Scilly; the Common Council of the City of London in its capacity as a local authority (see s 103).

3 Local Government and Public Involvement in Health Act 2007 s 106(1)(a). 'Local improvement target' means a target for improvement in the economic, social or environmental well-being of the responsible local authority's area which relates to any or all of the following the responsible local authority; one or more partner authorities; one or more other persons acting, or having functions exercisable, in the area of the responsible local authority (s 105(1)). For local improvement targets see PARA 388.

4 Local Government and Public Involvement in Health Act 2007 s 106(1)(b).

5 Local Government and Public Involvement in Health Act 2007 s 106(1)(c).

6 For the purposes of the Local Government and Public Involvement in Health Act 2007 Pt 5, Ch 1 (ss 103-118), each of the following is a partner authority in relation to a responsible local authority:

- 596 (1) any person mentioned in heads (a)-(n) below who acts or is established for an area which, or any part of which, coincides with or falls within the responsible local authority's area (s 104(1)(a));
- 597 (2) any person mentioned in heads (i), (ii) below who provides services at or from a hospital or other establishment or facility which falls within the responsible local authority's area (s 104(1)(b)); and
- 598 (3) any person mentioned in heads (A)-(J) below (s 104(1)(c)).

In determining the local improvement targets relating to it which are to be specified in the draft local area agreement, each partner authority must co-operate with the responsible local authority and have regard to any guidance issued by the Secretary of State: s 106(3).

In heading (1) above references to the area for which a person acts or is established are references, in the case of the Commissioner of Police of the Metropolis, to the metropolitan police district (within the meaning of the Police Act 1996 (see **POLICE**)); in the case of the Commissioner of the City of London Police, to the City of London police area (within the meaning of the Police Act 1996); in the case of any other chief officer of police, to the police area listed in Sch 1 for which his police force is maintained; and, in the case of Transport for London, Greater London: Local Government and Public Involvement in Health Act 2007 s 104(6).

The persons referred to in heading (1) above are:

- 599 (a) any district council which is not a responsible local authority (s 104(2)(a));
- 600 (b) a fire and rescue authority constituted by either a scheme under the Fire and Rescue Services Act 2004 s 2, or a scheme to which s 4 applies (see **FIRE SERVICES**), a metropolitan county fire and rescue authority or the London Fire and Emergency Planning Authority (Local Government and Public Involvement in Health Act 2007 s 104(2)(b), (5));
- 601 (c) a National Park authority (s 104(2)(c));
- 602 (d) the Broads Authority (s 104(2)(d));
- 603 (e) a police authority (s 104(2)(e));
- 604 (f) a chief officer of police (s 104(2)(f));
- 605 (g) a joint waste authority established under s 207(1) (see **PARA 51**) (s 104(2)(g));
- 606 (h) a waste disposal authority established under the Local Government Act 1985 s 10 (see **PARA 17**) (Local Government and Public Involvement in Health Act 2007 s 104(2)(h));
- 607 (i) Integrated Transport Authority (s 104(2)(i) (substituted by the Local Transport Act 2008 Sch 4 para 68));
- 608 (j) Transport for London (Local Government and Public Involvement in Health Act 2007 s 104(2)(j));
- 609 (k) a Primary Care Trust (s 104(2)(k));
- 610 (l) a development agency established by the Regional Development Agencies Act 1998 s 1 (see **TRADE AND INDUSTRY** vol 97 (2010) **PARA 988**) (Local Government and Public Involvement in Health Act 2007 s 104(2)(l));
- 611 (m) a local probation board established by the Criminal Justice and Court Services Act 2000 s 4 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 737**) (Local Government and Public Involvement in Health Act 2007 s 104(2)(m));
- 612 (n) a youth offending team established under the Crime and Disorder Act 1998 s 39 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 1703**) (Local Government and Public Involvement in Health Act 2007 s 104(2)(n)).

As to primary care trusts see **HEALTH SERVICES** vol 54 (2008) PARA 111 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to the broads authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

The persons referred to in the Local Government and Public Involvement in Health Act 2007 s 104(1)(b) (ie in head (2) above) are (i) a National Health Service trust; (ii) an NHS foundation trust: s 104(3).

The persons referred to in s 104(1)(c) (ie in head (3) above) are:

- 613 (A) the Arts Council of England (s 104(4)(a));
- 614 (B) the English Sports Council (s 104(4)(b));
- 615 (C) the Environment Agency (s 104(4)(c));
- 616 (D) the Health and Safety Executive (s 104(4)(d));
- 617 (E) the Historic Buildings and Monuments Commission (s 104(4)(e));
- 618 (F) the Homes and Communities Agency (s 104(4)(ea) (added by the Housing and Regeneration Act 2008 Sch 8 para 83));
- 619 (G) the Learning and Skills Council for England (Local Government and Public Involvement in Health Act 2007 s 104(4)(f));
- 620 (H) the Museums, Libraries and Archives Council (s 104(4)(g));
- 621 (I) Natural England (s 104(4)(h));
- 622 (J) the Secretary of State, but only in relation to his functions under the Employment and Training Act 1973 s 2 (arrangements with respect to obtaining etc employment or employees: see **EMPLOYMENT** vol 40 (2009) PARA 563), functions which he has as highway authority by virtue of the Highways Act 1980 s 1 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 50), functions which he has as traffic authority by virtue of the Road Traffic Regulation Act 1984 s 121A (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 293) and his functions under the Offender Management Act 2007 ss 2, 3 (responsibility for ensuring the provision of probation services throughout England and Wales) (ie functions to which s 2(1)(c) (functions to be performed through arrangements under s 3) applies) (Local Government and Public Involvement in Health Act 2007 s 104(4), (5A) (s 104(4) amended and s 104(5A) added by s 118(3), (4), and the Offender Management Act 2007 Sch 3 para 5(1), (3)(b), (4))).

As to the Arts Council of England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 961. As to the English Sports Council see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 965. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to the Health and Safety Executive see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARAS 361-369. As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq. As to the Homes and Communities Agency see **HOUSING**. As to the Learning and Skills Council for England see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1072 et seq. As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

The Secretary of State may by order amend the Local Government and Public Involvement in Health Act 2007 s 104(2), (3) or (4) by adding to it any person who has functions of a public nature; removing from it any person for the time being mentioned in it; or adding to s 104(4)(i) any function of the Secretary of State or removing from it any function for the time being mentioned in it; and make such other amendments of s 104 as appear to him to be necessary or expedient in consequence of such provisions: s 104(7).

Before making an order under s 104(7) the Secretary of State must consult such representatives of local government and such other persons (if any) as he considers appropriate: s 104(8).

The following applies in relation to each responsible local authority when it is first directed by the Secretary of State under s 106(1) to prepare and submit a draft of a local area agreement: s 118(1). If the direction so provides it is immaterial, for the purpose of satisfying the duty imposed by s 106(1), whether the draft of the local area agreement was prepared before or after the direction was given and s 106(2), (3) do not apply in relation to the preparation of that draft local area agreement: s 118(2).

7 Local Government and Public Involvement in Health Act 2007 s 106(2)(a). In preparing the draft local area agreement, the responsible local authority must have regard to its community strategy prepared under the Local Government Act 2000 s 4 (strategies for promoting well-being) (see PARA 464) and any guidance issued by the Secretary of State: s 106(2)(c). Before issuing any such guidance, the Secretary of State must consult such representatives of local government (including representatives of partner authorities) and such other persons (if any) as he considers appropriate: s 106(4).

8 Local Government and Public Involvement in Health Act 2007 s 106(2)(b).

9 le under the Local Government and Public Involvement in Health Act 2007 s 106(1).

10 Local Government and Public Involvement in Health Act 2007 s 107(1). A requirement to modify the draft of a local area agreement operates for the purposes of s 106 as a direction under s 106(1) to prepare and submit a further draft of a local area agreement: s 107(3).

11 le by virtue of the Local Government and Public Involvement in Health Act 2007 s 106(1)(c).

12 Local Government and Involvement in Public Health Act 2007 s 107(2).

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388. Local improvement targets.

Where a local area agreement¹ has effect the responsible local authority, and each partner authority², must, in exercising its functions, have regard to every local improvement target³ specified in the local area agreement which relates to it⁴. Where the Secretary of State approves a draft of a local area agreement⁵, he may, within one month beginning with the date on which he approved the draft, designate any local improvement target⁶ specified in the local area agreement⁷.

1 As to local area agreements see PARA 387.

2 As to the meaning of 'responsible local authority' see PARA 387 note 2; and as to the meaning of 'partner authority' see PARA 387 note 6.

3 As to the meaning of 'local improvement target' see PARA 387 note 3.

4 Local Government and Public Involvement in Health Act 2007 s 108.

5 le an agreement under the Local Government and Public Involvement in Health Act 2007 s 107 (see PARA 387). As to the Secretary of State see PARA 96.

6 A designated target may not be amended or removed from a local area agreement except in accordance with the Local Government and Public Involvement in Health Act 2007 ss 111, 112 (see PARAS 390-391): s 110(1). Any other local improvement target for the time being specified in a local area agreement may be amended, or removed from the local area agreement, by the responsible local authority, in accordance with s 110(4): s 110(2). However, this does not apply during the period of one month beginning with the date on which a draft of the local area agreement was approved by the Secretary of State under s 107 (see PARA 387); or in relation to any local improvement target which is added to the local area agreement by virtue of the approval of a revision proposal, during the period of one month beginning with the date on which the revision proposal was approved by the Secretary of State under s 112: s 110(3).

A responsible local authority may amend or remove a local improvement target under s 110(2) only with the consent of each partner authority to which the target relates and after consulting each other person to whom it relates: s 110(4). The responsible local authority may, with the consent of each person to whom the target in question is to relate, specify a new local improvement target in a local area agreement: s 110(6). However local improvement targets may not be added to a local area agreement except in accordance with s 110(6) or ss 111, 112: s 110(5). The responsible local authority must publish a memorandum relating to a local area

agreement whenever the local area agreement is modified under s 110(2) or (6): s 113(1)(b)(i). A memorandum under s 113(1) must state the period for which the local area agreement has effect; the local improvement targets for the time being specified in the local area agreement and, in relation to each of those targets: (1) whether it is for the time being a designated target; (2) the persons who are required by s 108 (see PARA 388) to have regard to the target; and (3) any other persons to whom the target relates: s 113(2)(a)-(c). The memorandum must take such form as the Secretary of State may direct: s 113(2). Different directions may be given under s 113(2) in relation to different responsible local authorities or different descriptions of responsible local authority: s 113(3). A direction under s 113(2) may be varied or revoked: s 113(4).

In Pt 5 Ch 1 'designated target' means a local improvement target designated by the Secretary of State under s 109: s 117.

For the purposes of Pt 5 Ch 1, a target specified in a local area agreement relates to the responsible local authority if the exercise by the authority of any of its functions, or anything done by the authority, could contribute to the attainment of the target: s 105(2).

For the purposes of Pt 5 Ch 1, a target specified in a local area agreement relates to a person other than the responsible local authority if the exercise by the person of any of his functions, or anything done by the person, could contribute to the attainment of the target; and the person has consented to the target being specified in the local area agreement (and, where the target has been amended under s 110 or 112, to the amendment): s 105(3).

7 Local Government and Public Involvement in Health Act 2007 s 109(1). A designation under s 109 may be revoked: s 109(3). The power to make or revoke a designation under s 109 is exercisable by notice in writing to the responsible local authority: s 109(4). The responsible authority must publish a memorandum relating to a local area agreement whenever the Secretary of State designates a local improvement target area under s 109 or revokes a designation under s 109: s 113(1)(a). See note 6.

UPDATE

388 Local improvement targets

TEXT AND NOTES--As to multi-area agreements which specify improvement targets for a geographic area for which there are two or more local authorities, see the Local Democracy, Economic Development and Construction Act 2009 Pt 7 (ss 121-137); and PARA 388A.

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388A. Multi-area agreements

1. Basic concepts

A 'multi-area agreement' means a document that covers an area for which there are two or more local authorities, and specifies improvement targets for that area: Local Democracy, Economic Development and Construction Act 2009 s 121(2). As to the specified local authorities, see the Local Democracy, Economic Development and Construction Act 2009 s 122. An 'improvement target' means a target for improvement in the economic, social or environmental well-being of the whole or any part of the area covered by a multi-area agreement and which relates to any or all of the following: (1) one or more local authorities for that area; (2) one or more partner authorities for that area; and (3) one or more other persons acting, or having functions exercisable, in that area: s 121(4). As to partner authorities, see the Local Democracy, Economic Development and Construction Act 2009 s 123. Any part of the area may be separated from any other part by territory that is not part of the area: s 121(3). A target specified in a multi-area agreement relates to a person if the exercise of any of that

person's functions, or anything done by that person, could contribute to the attainment of the target, and that person has consented to the application of the target to that person: s 121(5). A person is taken to have consented to the application of a target to that person if that person has consented to the target being specified in the agreement, or where the target has been changed, that person has consented to the change: s 121(6).

2. Preparation and approval of draft multi-area agreements

The local authorities for an area proposed to be covered by a multi-area agreement ('the proposed area') may request the Secretary of State to give a direction under the Local Democracy, Economic Development and Construction Act 2009 s 125 for the preparation and submission of a draft multi-area agreement for the proposed area: Local Democracy, Economic Development and Construction Act 2009 s 124(1). The local authorities making the request must include all of the local authorities for the proposed area, other than any non-unitary district council for that area, and may include any non-unitary district council for that area: s 124(2). A 'non-unitary district council' means a district council for an area that is part of the area of a county council: s 124(3). The request must be made in writing and must identify the local authorities making the request, nominate one of them to be responsible for preparing and submitting the draft, and identify the proposed area: s 124(4). The local authorities making the request must have regard to any guidance issued by the Secretary of State about such requests: s 124(5).

Before issuing guidance under the Local Democracy, Economic Development and Construction Act 2009 Pt 7 (ss 121-137) (see PARA 388A.1 et seq), the Secretary of State must consult such representatives of local government, and such other persons, as the Secretary of State considers appropriate: Local Democracy, Economic Development and Construction Act 2009 s 136(1). The reference to representatives of local government includes representatives of any persons who are, or are capable of being, partner authorities for the area covered by a multi-area agreement: s 136(2).

If a request is made in accordance with s 124, the Secretary of State may direct the responsible authority to prepare a draft multi-area agreement for the proposed area and submit it to the Secretary of State: s 125(1). The draft must specify, in relation to each improvement target the persons or persons to who the target relates, and where the target does not relate to the whole of the proposed area, the part or parts of the area to which it relates: s 125(2). The draft must specify the period for which the multi-area agreement is to have effect: s 125(3). A direction under s 125 may specify the date by which the draft must be submitted to the Secretary of State, and may be varied or revoked: s 125(4).

In preparing a draft multi-area agreement in accordance with a direction under s 125, the responsible authority must consult each of the other local authorities for the proposed area, each partner authority for that area, and such other persons as appear to it to be appropriate: Local Democracy, Economic Development and Construction Act 2009 s 126(1). In preparing the draft, the responsible authority must co-operate with each of the other local authorities for the proposed area, and each partner authority for that area, in determining the improvement targets relating to that local authority or partner authority that are to be specified in the draft, and the responsible authority must have regard to any guidance issued by the Secretary of State: s 126(2), (3). In determining the improvement targets relating to it which are to be specified in the draft, each of the other local authorities, and each partner authority, for the proposed area must co-operate with the responsible authority, and have regard to any guidance issued by the Secretary of State: s 126(4).

If a draft multi-area agreement is submitted to the Secretary of State under s 125, the Secretary of State may by notice in writing to the responsible authority approve the draft, require the responsible authority to modify the draft, or reject the draft: Local Democracy, Economic Development and Construction Act 2009 s 127(1). If the Secretary of State approves

a draft multi-area agreement, a multi-area agreement in the form of the draft has effect for the period specified in it: s 127(2). A requirement to modify a draft multi-area agreement operates for the purposes of s 125 as a direction to prepare and submit a further draft of a multi-area agreement: s 127(3). If the Secretary of State rejects a draft multi-area agreement, the Secretary of State may not give a further direction under s 125 based on the same request under s 124: s 127(4).

If a multi-area agreement is approved under s 127 (see PARA 388A.2) or s 129 (see PARA 388A.3), the responsible authority must publish such information about the agreement as it considers appropriate: Local Democracy, Economic Development and Construction Act 2009 s 135(1). If a revision proposal is approved under s 134 (see PARA 388A.5), the responsible authority must publish such information about the revisions to the multi-area agreement as revised by the revision proposal it considers appropriate: s 135(2). Information required to be published under s 135 may be published in such manner as the responsible authority considers appropriate: s 135(3).

3. Submission and approval of existing multi-area agreements

The local authorities for an area covered by a multi-area agreement prepared otherwise than in accordance with a direction under the Local Democracy, Economic Development and Construction Act 2009 s 125, may submit the agreement to the Secretary of State, and request the Secretary of State to approve the agreement under the Local Democracy, Economic Development and Construction Act 2009 s 129: Local Democracy, Economic Development and Construction Act 2009 s 128(1), (2). The local authorities making the request (1) must include all of the local authorities for the area covered by the agreement, other than any non-unitary district council for that area; or (2) may include any non-unitary district council for that area: s 128(3). Before making the request, the local authorities must consult any other local authority for the area covered by the agreement, and each partner authority for that area: s 128(4). The agreement must specify, in relation to each improvement target the persons or persons to who the target relates, and where the target does not relate to the whole of the proposed area, the part or parts of the area to which it relates, and the period for which it has effect: s 128(5), (6). The request must be made in writing and must (a) identify the local authorities making the request; (b) nominate one of them as the responsible authority in relation to the agreement; (c) identify the area covered by the agreement; and (d) provide information about the outcome of the consultation under s 128(4): Local Democracy, Economic Development and Construction Act 2009 s 128(7). The local authorities making the request must have regard to any guidance issued by the Secretary of State about such requests: Local Democracy, Economic Development and Construction Act 2009 s 128(8). As to consultation on guidance, see Local Democracy, Economic Development and Construction Act 2009 s 136; and PARA 388A.2.

If a multi-area agreement is submitted to the Secretary of State in accordance with s 128, the Secretary of State may approve the agreement by notice in writing to the responsible authority: s 129(1). An agreement approved under s 129 has effect for the purposes of Pt 7 (ss 121-137) (see PARA 388A.1 et seq) for the period specified in it: s 129(2). As to information about multi-area agreements, see Local Democracy, Economic Development and Construction Act 2009 s 135; and PARA 388A.2.

4. Duty to have regard to improvement target

Where a multi-area agreement has effect by virtue of the Local Democracy, Economic Development and Construction Act 2009 s 127 (see PARA 388A.2) or the Local Democracy, Economic Development and Construction Act 2009 s 129 (see PARA 388A.3), each local authority for the area covered by the agreement and each partner authority for that area, must, in exercising its functions, have regard to every improvement target specified in the

agreement that relates to it: Local Democracy, Economic Development and Construction Act 2009 s 130.

5. Revision of multi-area agreements

At any time while a multi-area agreement has effect by virtue of the Local Democracy, Economic Development and Construction Act 2009 s 127 (see PARA 388A.2) or the Local Democracy, Economic Development and Construction Act 2009 s 129 (see PARA 388A.3), the responsible authority (1) may prepare and submit to the Secretary of State a revision proposal; and (2) must do so if the Secretary of State so directs: Democracy, Economic Development and Construction Act 2009 s 132(1)(a), (b). As to the meanings of 'responsible authority' and 'revision proposal', see Local Democracy, Economic Development and Construction Act 2009 ss 131, 132(2)-(4). A direction under s 132 may specify the date by which a revision proposal must be submitted to the Secretary of State, and may be varied or revoked: s 132(5).

In preparing a revision proposal, the responsible authority must consult each of the other local authorities for the area that would be covered by the multi-area agreement if the revision proposal were approved ('the agreement area'), each partner authority for that area, and such other persons as appear to it to be appropriate: Local Democracy, Economic Development and Construction Act 2009 s 133(1). The responsible authority must also co-operate with each of the other local authorities for the agreement area, and each partner authority for that area, in determining a change affecting that local authority or partner authority that is to be proposed by the revision proposal, and must have regard to any guidance issued by the Secretary of State: s 133(2), (3). In determining a change affecting it that is to be proposed by the revision proposal, each of the other local authorities, and each partner authority, for the agreement area must co-operate with the responsible authority, and have regard to any guidance issued by the Secretary of State: s 133(4). As to consultation on guidance, see Democracy, Economic Development and Construction Act 2009 s 136; and PARA 388A.2.

If a revision proposal relating to a multi-area agreement is submitted to the Secretary of State under s 132, the Secretary of State may by notice in writing to the responsible authority (a) approve the revision proposal; (b) if the revision proposal was submitted to the Secretary of State pursuant to a direction under s 132(1)(b), require the responsible authority to modify the revision proposal; or (c) reject the revision proposal: Local Democracy, Economic Development and Construction Act 2009 s 134(1). If the Secretary of State approves the revision proposal, the multi-area agreement has effect subject to the changes set out in the revision proposal: s 134(2). A requirement to modify a revision proposal operates for the purposes of s 132 as a direction under s 132(1)(b) to prepare and submit a further revision proposal: s 134(3).

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389. Joint overview and scrutiny committees.

The Secretary of State may by regulations¹ make provision under which a group of partner authorities² may appoint a joint committee (a 'joint overview and scrutiny committee') and arrange for any functions of making the following reports and recommendations to be exercisable by the committee³. A report or recommendation falls within this provision if:

- 320 (1) it concerns a matter which relates to the attainment of any local improvement target⁴ specified for the time being in a relevant local area agreement⁵ and is not an excluded matter⁶; and
- 321 (2) is made to the county council or the county council and one or more district councils⁷, in the group of partner authorities⁸.

Regulations under the above provisions may in particular:

- 322 (a) provide for arrangements to be made only in circumstances, or subject to conditions or limitations, specified by the regulations⁹;
- 323 (b) in relation to joint overview and scrutiny committees, make provision applying or corresponding to certain provisions¹⁰ with or without modification¹¹;
- 324 (c) make provision as to relevant information which associated authorities¹² must provide to a joint overview and scrutiny committee (or, if the regulations make provision for the appointment of sub-committees of such a committee, to such a sub-committee) and as to information which may not be disclosed by an associated authority to a joint overview and scrutiny committee (or, if the regulations make provision for the appointment of sub-committees of such a committee, to such a sub-committee)¹³.

Any group of partner authorities and any joint overview and scrutiny committee must, in exercising or deciding whether to exercise any functions conferred on it by or by virtue of regulations under these provisions, have regard to any guidance issued by the Secretary of State¹⁴.

1 As to the Secretary of State see PARA 96. At the date at which this volume states the law no such regulations had been made.

2 For these purposes 'group of partner authorities' means a county council in England and one or more district councils which are partner authorities of it: Local Government and Public Involvement in Health Act 2007 s 123(1). As to the meaning of 'partner authority' see PARA 387 note 6 (definition applied by s 123(8)(b)).

3 Local Government and Public Involvement in Health Act 2007 s 123(2).

4 As to the meaning of 'local improvement target' see PARA 387 note 3 (definition applied by the Local Government and Public Involvement in Health Act 2007 s 123(8)(b)).

5 'Relevant local area agreement', in relation to a joint overview and scrutiny committee, means a local area agreement of the county council in the group of partner authorities which appointed the committee: Local Government and Public Involvement in Health Act 2007 s 123(8)(a). As to local area agreements see PARA 387 (definition applied by s 123(8)(b)).

6 Local Government and Public Involvement in Health Act 2007 s 123(3)(a). For this purpose 'excluded matter' means any matter with respect to which a crime and disorder committee could make a report or recommendations by virtue of the Police and Justice Act 2006 s 19(1)(b) (see PARA 485) (local authority scrutiny crime and disorder matters) or by virtue of s 19(3)(a): Local Government and Public Involvement in Health Act 2007 s 123(4)(a).

7 The reference to a report or recommendations being made to a county council or district council is, in the case of a local authority operating executive arrangements under the Local Government Act 2000 Pt 2, to be read as a reference to a report or recommendations being made to the local authority or its executive: Local Government and Public Involvement in Health Act 2007 s 123(4)(b).

8 Local Government and Public Involvement in Health Act 2007 s 123(3)(b).

9 Local Government and Public Involvement in Health Act 2007 s 123(5)(a).

10 ie applying, or corresponding to, any provision of the Local Government Act 2000 ss 21(4), (6)-(12), 21A-21D or the National Health Service Act 2006 s 246, Sch 17.

11 Local Government and Public Involvement in Health Act 2007 s 123(5)(b).

12 For this purpose 'associated authority' means the county council in the group of partner authorities which appointed the joint overview and scrutiny committee or any person which is a partner authority in relation to that council other than a police authority or a chief officer of police: Local Government and Public Involvement in Health Act 2007 s 123(6). 'Relevant information', in relation to an associated authority, means information which is relevant to a local improvement target in a relevant local area agreement which relates to the associated authority: s 123(6). The provisions of s 105(2) or (3) apply for the purpose of determining whether a local improvement target relates to an associated authority: s 123(6). Regulations under s 123 may not make provision of a kind mentioned in heading (c) in the text with respect to information in respect of which provision may be made in exercise of the power conferred by the Police and Justice Act 2006 s 205(5)(c) or (d) (guidance and regulations regarding crime and disorder matters): Local Government and Public Involvement in Health Act 2007 s 123(7).

13 Local Government and Public Involvement in Health Act 2007 s 123(5)(c).

14 Local Government and Public Involvement in Health Act 2007 s 123(9).

UPDATE

389 Joint overview and scrutiny committees

TEXT AND NOTES--Omitted. Local Government and Public Involvement in Health Act 2007 s 123 substituted: Local Democracy, Economic Development and Construction Act 2009 s 32.

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390. Designated targets: revision proposals.

At any time while a local area agreement has effect, a responsible local authority may prepare and submit to the Secretary of State a revision proposal¹ and must do so if the Secretary of State so directs².

A revision proposal must if it proposes changes to a designated target³ specify the persons to whom the target relates who have consented to the changes⁴ and if the revision proposal proposes an additional local improvement target⁵ it must specify the persons to whom the target is to relate⁶.

In preparing a revision proposal, the responsible local authority must consult each partner authority⁷, and such other persons as appear to it to be appropriate⁸, co-operating with each partner authority in determining changes to, or the removal of designated targets, or additional local improvement targets, relating to the partner authority which are to be proposed by the revision proposal⁹. In preparing a revision proposal, the responsible local authority must also have regard to its community strategy¹⁰ and any guidance¹¹ issued by the Secretary of State¹².

In determining changes to or the removal of designated targets, or additional local improvement targets, relating to it which are to be proposed by the revision proposal, each partner authority must co-operate with the responsible local authority and have regard to any guidance¹³ issued by the Secretary of State¹⁴.

1 Local Government and Public Involvement in Health Act 2007 s 111(1)(a). In Pt 5 Ch 1 (ss 103-118), 'revision proposal', in relation to a local area agreement, means a document proposing any or all of the following:

623 (1) changes to designated targets specified in the local area agreement (s 111(2)(a));

624 (2) the removal of designated targets from the local area agreement (s 111(2)(b));

625 (3) that additional local improvement targets be specified in the local area agreement (s 111(2)(c)).

As to the Secretary of State see PARA 96. As to the meaning of 'local area agreement' see PARA 387. As to the meaning of 'responsible local authority' see PARA 387 note 2.

2 Local Government and Public Involvement in Health Act 2007 s 111(1)(b). A direction under s 111(1)(b) may specify the date by which a revision proposal must be submitted to the Secretary of State: s 111(7). A direction under s 111(1)(b) may be varied or revoked: s 111(8).

3 Ie under the Local Government and Public Involvement in Health Act 2007 s 111(2)(a). As to the meaning of 'designated target' see PARA 388 note 6.

4 Local Government and Public Involvement in Health Act 2007 s 111(3)(a).

5 Ie under the Local Government and Public Involvement in Health Act 2007 s 111(2)(c). As to the meaning of 'local improvement target' see PARA 387 note 3.

6 Local Government and Public Involvement in Health Act 2007 s 111(3)(b).

7 Local Government and Public Involvement in Health Act 2007 s 111(4)(a)(i). As to the meaning of 'partner authority' see PARA 387 note 6.

8 Local Government and Public Involvement in Health Act 2007 s 111(4)(a)(ii).

9 See the Local Government and Public Involvement in Health Act 2007 s 111(4)(b).

10 Ie its community strategy prepared under the Local Government Act 2000 s 4 (strategies for promoting well-being) (see PARA 464).

11 Before issuing any guidance under the Local Government and Public Involvement in Health Act 2007 s 111, the Secretary of State must consult such representatives of local government (including representatives of partner authorities) and such other persons (if any) as he considers appropriate: s 111(6).

12 Local Government and Public Involvement in Health Act 2007 s 111(4)(c).

13 See note 11.

14 Local Government and Public Involvement in Health Act 2007 s 111(5).

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391. Approval of revision proposal.

Where a revision proposal relating to a local area agreement has been submitted to the Secretary of State by a responsible local authority¹, the Secretary of State may by notice² to the responsible local authority approve or reject the revision proposal³ or, if the revision proposal was submitted to him pursuant to a direction⁴, require the responsible local authority to modify the revision proposal⁵.

If the Secretary of State approves the revision proposal, the local area agreement has effect subject to the changes set out in the revision proposal⁶. The Secretary of State may, within one month beginning with the date on which he approved the revision proposal, designate any local improvement target which is added to the local area agreement by virtue of the approval⁷.

1 le under the Local Government and Public Involvement in Health Act 2007 s 111(1) (see PARA 390). As to the Secretary of State see PARA 96. As to the meaning of 'local area agreement' see PARA 387. As to the meaning of 'responsible local authority' see PARA 387 note 2. As to the meaning of 'revision proposal' see PARA 390 note 1.

2 The responsible authority must publish a memorandum relating to a local area agreement whenever the local area agreement is modified by virtue of the Local Government and Public Involvement in Health Act 2007 s 112(2); s 113(1)(b)(ii). See further PARA 388 note 6.

3 See the Local Government and Public Involvement in Health Act 2007 s 112(1)(a), (c).

4 le under the Local Government and Public Involvement in Health Act 2007 s 111(1)(b) (see PARA 390).

5 See the Local Government and Public Involvement in Health Act 2007 s 112(1)(b). Where a designated target is so modified the designation under s 109 continues to apply to the target as so modified (until revoked under s 109); s 112(3). A requirement under s 112(1)(b) to modify a revision proposal operates for the purposes of s 111 (see PARA 390) as a direction under s 111(1)(b) to prepare and submit a further revision proposal: (1) whenever the Secretary of State designates a local improvement target under s 109 or revokes a designation under s 109; and (2) whenever the local area agreement is modified under s 110(2) or (6); or by virtue of s 112(2); s 112(4).

6 Local Government and Public Involvement in Health Act 2007 s 112(2).

7 Local Government and Public Involvement in Health Act 2007 s 109(2).

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392. Health and social care: joint strategic needs assessments.

An assessment of relevant needs¹ must be prepared² in relation to the area of each responsible local authority³. A further assessment of relevant needs in relation to the area of a responsible local authority must be prepared if the Secretary of State so directs⁴; and may be prepared at any time⁵.

It is for the responsible local authority, and each of its partner PCTs, to prepare any such assessment of relevant needs in relation to the area of the responsible local authority⁶. The responsible local authority must publish each assessment of relevant needs prepared under these provisions in relation to its area⁷.

1 For the purposes of the Local Government and Public Involvement in Health Act 2007 s 116, there is a relevant need in relation to so much of the area of a responsible local authority as falls within the area for which a partner PCT acts if there appears to the responsible local authority and the partner PCT to be a need to which s 116(7) applies: s 116(6). Section 116(6) applies to a need:

626 (1) which:

9. (a) is capable of being met to a significant extent by the exercise by the responsible local authority of any of its functions (s 116(7)(a)(i)); and

10

10. (b) could also be met, or could otherwise be affected, to a significant extent by the exercise by the partner PCT of any of its functions (s 116(7)(a)(ii)); or

11

627 (2) which:

11. (a) is capable of being met to a significant extent by the exercise by the partner PCT of any of its functions (s 116(7)(b)(i)); and

12

12. (b) could also be met, or could otherwise be affected, to a significant extent by the exercise by the responsible local authority of any of its functions (s 116(7)(b)(ii)).

13

For the purposes of s 116 'partner PCT', in relation to a responsible local authority, means any primary care trust which is a partner authority of the responsible local authority: s 116(9). As to primary care trusts see **HEALTH SERVICES** vol 54 (2008) PARA 111 et seq.

2 In preparing an assessment under the Local Government and Public Involvement in Health Act 2007 s 116, the responsible local authority and each partner PCT must co-operate with one another; have regard to any guidance issued by the Secretary of State; and, if the responsible local authority is a county council, consult each relevant district council: s 116(8). For the purposes of s 116 'relevant district council' means (1) in relation to a responsible local authority, any district council which is a partner authority of it; and (2) in relation to a partner PCT of a responsible local authority, any district council which is a partner authority of the responsible local authority and whose district falls wholly or partly within the area for which the partner PCT acts: s 116(9).

3 Local Government and Public Involvement in Health Act 2007 s 116(1). As to the meaning of 'responsible local authority' see PARA 387 note 2.

4 Local Government and Public Involvement in Health Act 2007 s 116(2)(a). As to the Secretary of State see PARA 96. A direction under s 116(2)(a) may be revoked: s 116(3).

5 Local Government and Public Involvement in Health Act 2007 s 116(2)(b).

6 Local Government and Public Involvement in Health Act 2007 s 116(4).

7 Local Government and Public Involvement in Health Act 2007 s 116(5).

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393. Community planning.

As from a day to be appointed the following provisions have effect¹. A local authority² must initiate and, having done so, maintain, facilitate and participate in, community planning for its area and every community planning partner of a local authority must assist the authority in the discharge of these duties³.

Community planning for a local authority's area is a process by which the authority and its community planning partners⁴:

- 325 (1) identify long-term objectives for improving the social well-being of the area, the economic well-being of the area and the environmental well-being of the area⁵;
- 326 (2) identify long-term objectives in relation to the area for contributing to the achievement of sustainable development in the United Kingdom⁶; and
- 327 (3) identify actions to be performed and functions to be exercised by the local authority and its community planning partners for the purpose of meeting the objectives identified under heads (1) and (2)⁷.

Every community planning partner of a local authority must participate in community planning for the authority's area to the extent that such planning is connected with the partner's functions⁸.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 'Local authority' means a county council or a county borough council in Wales: Local Government (Wales) Measure 2009 s 47(1).

3 Local Government (Wales) Measure 2009 s 37(1), (3)(b).

4 For the purposes of the Local Government (Wales) Measure 2009 Pt 2 (ss 37-47), a local authority's community planning partners are the following:

628 (1) a community council for a community any part of which falls within the local authority's area (s 38(1)(a));

629 (2) a Welsh fire and rescue authority constituted for an area any part of which falls within the local authority's area (s 38(1)(b));

630 (3) a Local Health Board established for an area any part of which falls within the local authority's area (s 38(1)(c));

631 (4) an NHS Trust which is specified in relation to the authority's area by direction of the Welsh Ministers (s 38(1)(d));

632 (5) a national park authority any part of whose area falls within the local authority's area (s 38(1)(e));

633 (6) a police authority for a police area any part of which falls within the local authority's area (s 38(1)(f));

634 (7) the chief constable of the police force for a police area referred to in head (6) above (s 38(1)(g)).

Subject to s 38(3), (4) the Welsh Ministers may by order amend or omit any of heads (1)-(7) above, add additional headings, amend or omit such additional headings: s 38(2). The Welsh Ministers must not exercise this power: (a) so as to include, or provide for the inclusion of, a person within s 38(1) who does not have functions of a public nature; (b) so as to include, or provide for the inclusion of, a person within that provision unless they have consulted (i) where they propose to include a person, that person; (ii) such representatives of local authorities in Wales as the Welsh Ministers consider appropriate; (iii) such representatives of community planning partners as the Welsh Ministers consider appropriate: s 38(3). If the Welsh Ministers exercise their power under s 38(2) so as to include, or provide for the inclusion of, a person within s 38(1) who has functions of both a public and a private nature, they must include that person, or provide for that person's inclusion, only in relation to those of its functions which are of a public nature: s 38(4). For the purposes of Pt 2 'national park authority' means a national park authority for a National Park in Wales; 'police area' has the meaning given by the Police Act 1996 s 1; and 'police authority' means a police authority in Wales established under the Police Act 1996 s 3: see the Local Government (Wales) Measure 2009 s 47(1). As to the meaning of 'Welsh fire and rescue authority' see PARA 711 note 1 (definition applied by s 47(1)).

5 Local Government (Wales) Measure 2009 s 37(2)(a).

6 Local Government (Wales) Measure 2009 s 37(2)(b).

7 Local Government (Wales) Measure 2009 s 37(2)(c). For the purposes of s 37, a reference to an action to be performed or a function to be exercised by a local authority or one of its community planning partners is a reference to an action or function which is within the powers of the authority or partner: s 37(4). Any reference in Pt 2 (ss 37-47) to an action being performed or a function being exercised for the purposes of achieving a community strategy objective is a reference to an action being performed or a function being exercised as described in s 37(2)(c): s 47(2).

8 Local Government (Wales) Measure 2009 s 37(3)(b). Where Pt 2 (ss 37-47) refers to a thing being connected with a community planning partner's functions, the functions in question do not include the partner's functions under Pt 2: s 47(3).

UPDATE

393 Community planning

NOTES 1, 2, 4--Local Government (Wales) Measure 2009 ss 38, 47 in force 17 July 2009: SI 2009/1796.

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394. Production of community strategy.

As from a day to be appointed the following provisions have effect¹. Once community planning for a local authority's² area has reached a certain stage, the authority must produce a document (referred to in the Local Government (Wales) Measure 2009 as a 'community strategy') containing the following information³. The stage to be reached is when the authority is of the opinion that the degree of consensus amongst the community planning partners and the authority: (1) as to community strategy objectives for the authority's area is such that it is appropriate to set such objectives in the community strategy⁴; and (2) as to the actions to be performed and functions to be exercised for the purpose of achieving those objectives is such that it is appropriate to describe them in the community strategy⁵.

The information to be contained in the community strategy is:

- 328 (a) a description of the community strategy objectives which the authority considers it appropriate to set having regard to the consensus referred to in head (1) above⁶; and
- 329 (b) a description of the actions to be performed and functions to be exercised for the purpose of achieving those objectives which the authority considers it appropriate to include in the strategy having regard to the consensus referred to in head (2) above⁷.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'community planning' see PARA 393. As to the meaning of 'local authority' see PARA 393 note 2.

3 Local Government (Wales) Measure 2009 s 39(1). The community strategy must be produced as soon as is reasonably practicable after community planning for the authority's area has reached the stage described in s 39(2) and once produced, must be published as soon as is reasonably practicable by the authority: s 39(4). A document referred to by the Local Government (Wales) Measure 2009 as a 'community strategy' (or by an expression including that term) may instead be referred to by whatever alternative name is agreed between a local authority and its community planning partners: s 47(4).

4 Local Government (Wales) Measure 2009 s 39(2)(a).

5 Local Government (Wales) Measure 2009 s 39(2)(b). Any reference in Pt 2 (ss 37-47) to an action being performed or a function being exercised for the purposes of achieving a community strategy objective is a

reference to an action being performed or a function being exercised as described in s 37(2)(c) (see PARA 393); s 47(2).

6 Local Government (Wales) Measure 2009 s 39(3)(a).

7 Local Government (Wales) Measure 2009 s 39(3)(b).

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395. Review of community strategy.

As from a day to be appointed the following provisions have effect¹. A community strategy² must be reviewed³ by the following process⁴. A local authority⁵ and its community planning partners⁶ must:

- 330 (1) taking into account certain information⁷, consider the extent to which the community strategy objectives contained in the strategy have been met⁸ and, if an objective has not been met, progress has been made towards meeting the objective⁹;
- 331 (2) in the light of the consideration under head (1) above and any other factors which the authority or a partner think appropriate, consider:
- .2
- 1. (a) whether the community strategy objectives should be modified¹⁰;
- 2. (b) whether new objectives should be set¹¹;
- 3. (c) whether the strategy's description of the actions to be taken and functions to be exercised for the purpose of achieving a community strategy objective should be modified (whether in the light of a modification of an objective or for any other reason)¹²;
- 4. (d) where the authority or partner consider that a new objective should be set, which actions should be taken and which functions exercised for the purpose of achieving the objective¹³.
- .3

If a particular requirement is met¹⁴ a local authority must, following the consideration required by heads (1) and (2) above, amend the community strategy¹⁵ for its area by doing all or any of the following:

- 332 (i) modifying the community strategy objectives¹⁶;
- 333 (ii) setting new objectives¹⁷;
- 334 (iii) modifying the actions to be taken and functions to be exercised for the purpose of achieving a community strategy objective¹⁸;
- 335 (iv) describing the actions to be taken and functions to be exercised for the purpose of achieving a new objective¹⁹.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'community strategy' see PARA 394.

3 A community strategy review must be completed in accordance with the Local Government (Wales) Measure 2009 s 41 before the fourth anniversary of the date on which the community strategy was published under s 39(4) (see PARA 394) and subsequently, before the fourth anniversary of the date on which the last community strategy review was completed: s 40(1). For the purposes of ss 40, 41, a community strategy review is completed on the date on which an amended community strategy is published under s 41(6) or, if a review does not result in any amendment to a community strategy, the date on which the local authority decided that it was not required under s 41(4) to amend the strategy: s 40(2).

4 See the Local Government (Wales) Measure 2009 s 41(1).

5 As to the meaning of 'local authority' see PARA 393 note 2.

6 A community planning partner's duty under the Local Government (Wales) Measure 2009 s 41(2) extends only to matters connected with its functions: s 41(3). As to the meaning of 'community planning partner' see PARA 393 note 4. Where Pt 2 (ss 37-47) refers to a thing being connected with a community planning partner's functions, the functions in question do not include the partner's functions under Pt 2: s 47(3).

7 In taking into account any statement published under the Local Government (Wales) Measure 2009 s 42(3) (see PARA 396).

8 Local Government (Wales) Measure 2009 s 41(2)(a)(i). The information to be taken into account mentioned in the text refers to any statement published under s 42(3) since the community strategy was produced or (as the case may be) its last review was completed: s 41(2)(a). As to the community strategy objectives see PARA 394.

9 Local Government (Wales) Measure 2009 s 41(2)(a)(ii).

10 Local Government (Wales) Measure 2009 s 41(2)(b)(i).

11 Local Government (Wales) Measure 2009 s 41(2)(b)(ii).

12 Local Government (Wales) Measure 2009 s 41(2)(b)(iii). Any reference in Pt 2 (ss 37-47) to an action being performed or a function being exercised for the purposes of achieving a community strategy objective is a reference to an action being performed or a function being exercised as described in s 37(2)(c) (see PARA 393): s 47(2).

13 Local Government (Wales) Measure 2009 s 41(2)(b)(iv).

14 The requirement is that, in relation to a proposed amendment, the authority is of the opinion that the degree of consensus amongst the community planning partners and the authority in relation to the amendment is such that it is appropriate to make the amendment: Local Government (Wales) Measure 2009 s 41(5).

15 The local authority must, as soon as is reasonably practicable after becoming subject to the duty under the Local Government (Wales) Measure 2009 s 41(4), publish an amended community strategy: s 41(6).

16 Local Government (Wales) Measure 2009 s 41(4)(a).

17 Local Government (Wales) Measure 2009 s 41(4)(b).

18 Local Government (Wales) Measure 2009 s 41(4)(c).

19 Local Government (Wales) Measure 2009 s 41(4)(d).

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396. Monitoring of community strategy.

As from a day to be appointed the following provisions have effect¹. A local authority and its community planning partners² must ensure that arrangements are made for monitoring progress made towards meeting the community strategy objectives³ for the local authority's

area contained in the current community strategy and the effectiveness of actions taken and functions exercised for the purpose of meeting those objectives⁴. A community planning partner's duty under these provisions extends only to matters connected with its functions⁵.

A local authority must from time to time (but at least once every two years) publish a statement which describes progress made towards meeting the community strategy objectives for its area and actions taken and functions exercised for the purpose of meeting those objectives⁶.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'local authority' see PARA 393 note 2. As to the meaning of 'community planning partner' see PARA 393 note 4.

3 As to the community strategy objectives see PARA 394.

4 Local Government (Wales) Measure 2009 s 42(1). 'Current community strategy' means the community strategy for a local authority's area published under s 39(4) (see PARA 394) or, where the strategy has been amended following a review under s 41 (see PARA 395), the strategy most recently published under s 41(6): s 47(1). Any reference in Pt 2 (ss 37-47) to an action being performed or a function being exercised for the purposes of achieving a community strategy objective is a reference to an action being performed or a function being exercised as described in s 37(2)(c) (see PARA 393): s 47(2).

5 Local Government (Wales) Measure 2009 s 42(2). Where Pt 2 (ss 37-47) refers to a thing being connected with a community planning partner's functions, the functions in question do not include the partner's functions under Pt 2: s 47(3).

6 Local Government (Wales) Measure 2009 s 42(3). It is the duty of each community planning partner of a local authority to provide such information as the authority may reasonably require in order to enable it to comply with its duty under s 42(3): s 42(4). The first statement under s 42(3) must be produced within two years of the date on which a community strategy is published under s 39(4) (see PARA 394): s 42(5).

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397. Implementing community strategy.

As from a day to be appointed the following provisions have effect¹. The following applies to a local authority or one of its community planning partners² if the current community strategy³ for the authority's area describes an action to be performed by the authority or partner for the purposes of achieving a community strategy objective or a function to be exercised by the authority or partner for the purpose of achieving a community strategy objective⁴.

The authority or community planning partner must take all reasonable steps to perform the action or exercise the function in accordance with the community strategy⁵.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'local authority' see PARA 393 note 2. As to the meaning of 'community planning partner' see PARA 393 note 4.

3 As to the community strategy objectives see PARA 394.

4 Local Government (Wales) Measure 2009 s 43(1). As to the meaning of 'current community strategy' see PARA 396 note 4. Any reference in Pt 2 (ss 37-47) to an action being performed or a function being exercised for the purposes of achieving a community strategy objective is a reference to an action being performed or a function being exercised as described in s 37(2)(c) (see PARA 393): s 47(2).

5 Local Government (Wales) Measure 2009 s 43(2).

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(ii) Local Involvement

398. Local involvement networks.

Each local authority¹ must make contractual arrangements² for the purpose of ensuring that there are means by which specified activities³ for the local authority's area can be carried on in the area⁴ and the person who, in pursuance of those arrangements, is to carry on in the relevant local authority's area activities specified for that area is known as the 'local involvement network'⁵.

Regulations⁶:

- 336 (1) must be made which provide that the arrangements ('local authority arrangements') must required prescribed provisions to be included in local involvement network arrangements⁷;
- 337 (2) may be made which impose specified duties on a services-provider⁸;
- 338 (3) must be made which provide, for the purposes of imposing in a services-provider, a duty to allow authorised representatives to enter and view, and observe the carrying-on of activities on, premises owned or controlled by the services-provider⁹;
- 339 (4) may make transitional arrangements¹⁰.

Where a local involvement network refers a matter relating to social care services to an overview and scrutiny committee of a local authority, the committee must acknowledge receipt of the referral¹¹ and keep the referrer informed of the committee's actions¹².

1 As to the meaning of 'local authority' see PARA 23.

2 Such arrangements must include the required provision about annual reports: see the Local Government and Public Involvement in Health Act 2007 s 222(7); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to the requirement to provide annual reports see s 227; and **HEALTH SERVICES** vol 54 (2008) PARA 526. In relation to the particular arrangements that may be made see further s 222; and **HEALTH SERVICES** vol 54 (2008) PARA 526.

3 Ie the activities specified in the Local Government and Public Involvement in Health Act 2007 s 221(2) (see **HEALTH SERVICES** vol 54 (2008) PARA 526). Regulations may be made which add activities to those specified: see s 221(4), (5); and **HEALTH SERVICES** vol 54 (2008) PARA 526.

4 See the Local Government and Public Involvement in Health Act 2007 s 221(1); and **HEALTH SERVICES** vol 54 (2008) PARA 526.

5 See the Local Government and Public Involvement in Health Act 2007 s 222(2); and **HEALTH SERVICES** vol 54 (2008) PARA 526.

6 The Local Involvement Networks Regulations 2008, SI 2008/528 (amended by SI 2008/1877) have been made under the Local Government and Public Involvement in Health Act 2007 ss 223, 224(1), 226(6), 228(3)-(5), 229(2), 240(10) and:

- 635 (1) require local authorities to ensure that local involvement network arrangements include certain provisions about local involvement networks' procedure and decision-making (see the Local Involvement Networks Regulations 2008, SI 2008/528, regs 2, 3);
- 636 (2) provide for notification requirements by a local involvement network (see reg 4);
- 637 (3) set out the duties to be imposed on a services-provider (ie a National Health Service Trust, an NHS foundation trust, a Primary Care Trust and a local authority) where a local involvement network has made a recommendation or report to the services-provider (see regs 5, 6);
- 638 (4) make provision for transitional arrangements regarding the temporary duty imposed on local authorities under the Local Government and Public Involvement in Health Act 2007 s 221 (see the Local Involvement Networks Regulations 2008, SI 2008/528, regs 7-16);
- 639 (5) set out the time for an overview and scrutiny committee of a local authority to acknowledge receipt of a referral of a social care matter by a local involvement network (see reg 17).

The Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008, SI 2008/915, have been made under the Local Government and Public Involvement in Health Act 2007 s 225(1)-(3), (7) (see **HEALTH SERVICES** vol 54 (2008) PARA 528) and s 229 and impose a duty on services-providers requiring them to allow authorised representatives of local involvement networks to enter and view certain premises owned or controlled by certain services-providers and to allow authorised representatives to observe the carrying-on of certain activities on such premises.

7 See the Local Government and Public Involvement in Health Act 2007 s 223(1); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to such regulations see note 6.

8 See the Local Government and Public Involvement in Health Act 2007 s 224(1); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to the meaning of 'services-provider' see s 224(2); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to the duties the regulation may impose see s 224(1)(a)-(c); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to such regulations see note 6.

9 See the Local Government and Public Involvement in Health Act 2007 s 225(1); and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to the provision that may be made under such regulations see s 225(2), (3); the Local Involvement Networks (Duty of Service-Providers to Allow Entry) Regulations 2008, SI 2008/915; and **HEALTH SERVICES** vol 54 (2008) PARA 526.

10 See the Local Government and Public Involvement in Health Act 2007 s 228; and **HEALTH SERVICES** vol 54 (2008) PARA 526. As to such regulations see note 6.

11 Regulations may make provision as respects determining the time by which such a duty is to be performed: see the Local Government and Public Involvement in Health Act 2007 s 226(6); and **SOCIAL SERVICES AND COMMUNITY CARE**. As to such regulations see note 6.

12 See the Local Government and Public Involvement in Health Act 2007 s 226(1), (2); and **SOCIAL SERVICES AND COMMUNITY CARE**.

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399. Referral of social care matters from local involvement networks.

Where a local involvement network¹ refers a matter relating to social care services² to an overview and scrutiny committee³ of a local authority⁴, the committee must decide whether or not any of its powers is exercisable in relation to the matter referred⁵. If the committee

concludes that any of those powers is so exercisable, it must decide whether or not to exercise that power accordingly⁶. In exercising any of its powers, it must take into account any relevant information provided by a local involvement network⁷.

The committee must acknowledge receipt of the referral⁸, and keep the referrer informed of its actions in relation to the matter⁹.

1 As to local involvement networks see **HEALTH SERVICES**.

2 For these purposes 'social care services' means services provided as part of the social services functions of a local authority: Local Government and Public Involvement in Health Act 2007 s 226(8). For these purposes 'social services functions' has the same meaning as in the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): Local Government and Public Involvement in Health Act 2007 s 226(8).

3 For these purposes an 'overview and scrutiny committee':

640 (1) in relation to a local authority which under the Local Government Act 2000 Pt 2 (ss 10-48) operates executive arrangements, means an overview and scrutiny committee of the authority within the meaning given by s 21(1) (see PARA 342) (Local Government and Public Involvement in Health Act 2007 s 226(8)(a));

641 (2) in relation to a local authority which under Local Government Act 2000 Pt 2 (ss 10-48) operates alternative arrangements, means a committee or sub-committee appointed under s 32(1)(b) (see PARA 364) (Local Government and Public Involvement in Health Act 2007 s 226(8)(b));

642 (3) in relation to the Common Council of the City of London, means a committee established under the Health and Social Care Act 2001 s 10(1) (Local Government and Public Involvement in Health Act 2007 s 226(8)(c)); and

643 (4) in relation to the Council of the Isles of Scilly, means a committee which, by virtue of an order under the Local Government Act 1972 s 265 (see PARA 36), is appointed by the Council under the Local Government Act 2000 s 21(1) (see PARA 342) or 32(1)(b) (see PARA 364) (Local Government and Public Involvement in Health Act 2007 s 226(8)(d)).

4 Local Government and Public Involvement in Health Act 2007 s 226(1). For the purposes of s 226, something is done by a local involvement network if: (1) it is done by a person who, in pursuance of arrangements made under s 221(1) (see **HEALTH SERVICES**), is to carry on activities specified in s 221(2); and (2) it is done by that person in the carrying-on, under those arrangements, of activities so specified: s 226(7). As to the meaning of 'local authority' see PARA 23.

5 Local Government and Public Involvement in Health Act 2007 s 226(3).

6 Local Government and Public Involvement in Health Act 2007 s 226(4).

7 Local Government and Public Involvement in Health Act 2007 s 226(5).

8 Local Government and Public Involvement in Health Act 2007 s 226(2)(a). For these purposes the time by which a duty is to be performed is 20 working days beginning with the date on which the referral to which the duty applies was made: Local Government and Public Involvement in Health Act 2007 s 226(6); Local Involvement Networks Regulations 2008, SI 2008/528, reg 17.

9 Local Government and Public Involvement in Health Act 2007 s 226(2)(b).

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400. Community involvement in community planning.

As from a day to be appointed the following provisions have effect¹. A local authority and its community planning partners² must ensure that arrangements are made so that the persons mentioned in heads (1) to (5) below have the opportunity to express their views, and have them taken into account, in connection with community planning, the production of a community strategy³ for the authority's area and the review of community strategies⁴.

The persons are:

- 340 (1) persons resident in the local authority's area⁵;
- 341 (2) persons who are not resident in that area but who receive services provided by the authority or one of its community planning partners⁶;
- 342 (3) representatives of relevant voluntary organisations⁷;
- 343 (4) representatives of persons carrying on businesses in the authority's area⁸;
- 344 (5) other persons who, in the opinion of the authority, are interested in the improvement of the area's social, economic or environmental well-being⁹.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'local authority' see PARA 393 note 2. As to the meaning of 'community planning partner' see PARA 393 note 4.

3 As to the community strategy objectives see PARA 394.

4 Local Government (Wales) Measure 2009 s 44(1).

5 Local Government (Wales) Measure 2009 s 44(2)(a).

6 Local Government (Wales) Measure 2009 s 44(2)(b).

7 Local Government (Wales) Measure 2009 s 44(2)(c). For the purposes of s 44 'relevant voluntary organisations' means bodies (other than local authorities or other public bodies) whose activities are carried on otherwise than for profit and directly or indirectly benefit the whole or any part of the local authority's area: s 44(3). A registered social landlord (within the meaning of the Housing Act 1996 Pt 1: see **HOUSING**) which provides housing in the local authority's area is a relevant voluntary organisation for the purposes of the Local Government (Wales) Measure 2009 s 44: s 44(4).

8 Local Government (Wales) Measure 2009 s 44(2)(d).

9 Local Government (Wales) Measure 2009 s 44(2)(e).

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401. The role of the Welsh Ministers.

As from a day to be appointed the following provisions have effect¹. The Welsh Ministers may issue guidance² about:

- 345 (1) any aspect of community planning³;
- 346 (2) the production and review of community strategies⁴;
- 347 (3) the duties⁵ of a local authority and its community planning partners⁶.

A local authority and its community planning partners must have regard to any guidance so issued⁷.

The Welsh Ministers must, in exercising any function which might affect community planning aim, so far as it reasonably practicable to do so, to promote and encourage community planning⁸.

1 The Local Government (Wales) Measure 2009 Pt 2 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to guidance issued by the Welsh Ministers see the Local Government (Wales) Measure 2009 s 48; and PARA 711 note 3.

3 Local Government (Wales) Measure 2009 s 45(1)(a). As to community planning see PARA 393.

4 Local Government (Wales) Measure 2009 s 45(1)(b).

5 As to the duties under the Local Government (Wales) Measure 2009 ss 42-44 (see PARAS 396-397, 400-401).

6 As to the meaning of 'local authority' see PARA 393 note 2. As to the meaning of 'community planning partner' see PARA 393 note 4.

7 Local Government (Wales) Measure 2009 s 45(2).

8 Local Government (Wales) Measure 2009 s 46.

UPDATE

401 The role of the Welsh Ministers

NOTES 1-7--Local Government (Wales) Measure 2009 s 45 in force 17 July 2009: SI 2009/1796. Local Government (Wales) Measure 2009 s 48 in force 10 June 2009: s 53.

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(6) COMPANIES AND ENTITIES

(i) Companies

402. Companies controlled by local authorities and arm's length companies.

Until a day to be appointed the following provisions have effect¹. For the purposes of Part V of the Local Government and Housing Act 1989², unless the Secretary of State or the Welsh Ministers³ otherwise direct⁴, a company⁵ is for the time being under the control of a local authority⁶ if:

- 348 (1) the company is at that time⁷ a subsidiary of the local authority for the purposes of the Companies Act 1985⁸; or
- 349 (2) where head (1) above does not apply but the local authority has at that time power to control a majority of the votes at a general meeting of the company⁹; or

- 350 (3) where head (1) above does not apply but the local authority has at that time
power to appoint or remove a majority of the board of directors of the company¹⁰;
or
351 (4) the company is under the control of another company which, by virtue of
these provisions, is itself under the control of the local authority¹¹.

Notwithstanding that, by virtue of the provisions set out above, a company is for the time being under the control of a local authority, the company is for the purposes of Part V of the Local Government and Housing Act 1989 an 'arm's length company' in relation to any financial year if, at a time before the beginning of that year, the authority resolved that the company should be an arm's length company and, at all times from the passing of that resolution up to the end of the financial year in question, the following conditions have applied while the company has been under the control of the local authority¹²:

- 352 (a) that each of the directors of the company was appointed for a fixed term of
at least two years¹³;
353 (b) that no director of the company has been removed¹⁴ by resolution¹⁵;
354 (c) that not more than one-fifth of the directors of the company have been
members or officers of the authority¹⁶;
355 (d) that the company has not occupied (as tenant or otherwise) any land in
which the authority has an interest, otherwise than for the best consideration
reasonably obtainable¹⁷;
356 (e) that the company has entered into an agreement with the authority that the
company will use its best endeavours to produce a specified positive return on its
assets¹⁸;
357 (f) that, except for the purpose of enabling the company to acquire fixed assets
or to provide it with working capital, the authority has not lent money to the
company or guaranteed any sum borrowed by it or subscribed for any securities in
the company¹⁹;
358 (g) that the authority has not made any grant to the company except in
pursuance of an agreement or undertaking entered into before the financial year²⁰
of the company in which the grant was made²¹; and
359 (h) that the authority has not made any grant to the company the amount of
which is in any way related to the financial results of the company in any period²².

1 The Local Government and Housing Act 1989 Pt V (ss 67-73) is repealed by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 16 as from a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

2 Ie the Local Government and Housing Act 1989 Pt V (ss 67-73).

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 A direction under the Local Government and Housing Act 1989 s 68(1) may be limited in time and may be made condition upon such matters as appear to the Secretary of State and the Welsh Ministers to be appropriate and may be made with respect to a particular company or a description of companies specified in the direction: s 68(2) (prospectively repealed: see note 1).

5 Any reference in the Local Government and Housing Act 1989 Pt V (ss 67-73) is a reference to a body corporate of one of the following descriptions: (1) a company limited by shares; (2) a company limited by guarantee and not having a share capital; (3) a company limited by guarantee and having a share capital; (4) an unlimited company; and (5) a society deemed to be registered under the Industrial and Provident Societies Act 1965: Local Government and Housing Act 1989 s 67(1) (prospectively repealed: see note 1). See further **COMPANIES; CORPORATIONS; FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq. Expressions used in heads (1)-(4) above have the same meaning as in the Companies Act 1985 Pt I Ch I (ss 1-24) (see **COMPANIES** vol 14 (2009) PARA 102 et seq): Local Government and Housing Act 1989 s 67(2) (as so prospectively repealed). Note that it is no longer possible for a company to be formed as, or to become, a company limited by

guarantee with a share capital: see the Companies Act 1985 s 1(4); the Companies Act 2006 s 5(1), (2); and **COMPANIES** vol 14 (2009) PARA 102.

6 As to the meaning of 'local authority' see PARA 23. Provisions exist but are not fully in force that govern the involvement of a local authority with (1) a company where the local authority has only minority interests in that company; and (2) companies specified by order: see the Local Government and Housing Act 1989 s 71 (prospectively repealed: see note 1). As to companies specified by order see the Local Authorities (Companies) Order 1995, SI 1995/849, art 11, Schedule.

7 le by virtue of the Companies Act 1985 s 736. As from 1 October 2009 s 736 is repealed: see instead the Companies Act 2006 s 1159; and **COMPANIES** vol 14 (2009) PARA 25.

8 Local Government and Housing Act 1989 s 68(1)(a) (prospectively repealed: see note 1).

9 Local Government and Housing Act 1989 s 68(1)(b) (prospectively repealed: see note 1).

10 Local Government and Housing Act 1989 s 68(1)(c) (prospectively repealed: see note 1).

11 Local Government and Housing Act 1989 s 68(1)(d) (prospectively repealed: see note 1). For the purposes of s 68(1)(d) any question whether or not one company is under the control of another is to be determined by applying the preceding provisions of s 68(1), substituting a reference to the other company for any reference to the local authority: see s 68(1) (as so prospectively repealed).

12 Local Government and Housing Act 1989 s 68(6) (prospectively repealed: see note 1).

13 Local Government and Housing Act 1989 s 68(6)(a) (prospectively repealed: see note 1).

14 le under the Companies Act 2006 s 168: see **COMPANIES** vol 14 (2009) PARA 517.

15 Local Government and Housing Act 1989 s 68(6)(b) (amended by SI 2007/2194; and prospectively repealed (see note 1)). If the Secretary of State or the Welsh Ministers so direct, the removal of a director is to be disregarded for the purposes of the Local Government and Housing Act 1989 s 68(6)(b); but the Secretary of State or the Welsh Ministers may not give such a direction if it appears to him or them that the director was removed with a view to influencing the management of the company for other than commercial reasons: s 68(7) (as so prospectively repealed).

16 Local Government and Housing Act 1989 s 68(6)(c) (prospectively repealed: see note 1).

17 Local Government and Housing Act 1989 s 68(6)(d) (prospectively repealed: see note 1).

18 Local Government and Housing Act 1989 s 68(6)(e) (prospectively repealed: see note 1).

19 Local Government and Housing Act 1989 s 68(6)(f) (prospectively repealed: see note 1).

20 le within the meaning of the Companies Act 2006: see **COMPANIES** vol 15 (2009) PARA 711.

21 Local Government and Housing Act 1989 s 68(6)(g) (amended by SI 2008/948; and prospectively repealed (see note 1)).

22 Local Government and Housing Act 1989 s 68(6)(h) (prospectively repealed: see note 1).

UPDATE

402 Companies controlled by local authorities and arm's length companies

TEXT AND NOTES 1-11--Local Government and Housing Act 1989 s 68(1)(a) substituted: SI 2009/1941.

NOTE 5--Local Government and Housing Act 1989 s 67(2) amended: SI 2009/1941.

403. Companies subject to local authority influence.

Until a day to be appointed the following provisions have effect¹. For the purposes of Part V of the Local Government and Housing Act 1989², unless the Secretary of State or the Welsh Ministers³ otherwise direct⁴, a company⁵ which is not at the time under the control of a local authority⁶ is for the time being subject to the influence of a local authority if it is not a banking or insurance company or a member of a banking or insurance group and at that time there is a business relationship⁷ between the company and the authority and: (1) at least 20 per cent of the total voting rights of all the members having the right to vote at a general meeting of the company are held by persons who are associated with the authority⁸; or (2) at least 20 per cent of the directors of the company are persons who are so associated⁹; or (3) at least 20 per cent of the total voting rights at a meeting of the directors of the company are held by persons who are so associated¹⁰.

1 The Local Government and Housing Act 1989 Pt V (ss 67-73) is repealed by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 16 as from a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

2 The Local Government and Housing Act 1989 Pt V (ss 67-73).

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 A direction under the Local Government and Housing Act 1989 s 69(1) may be limited in time and may be made conditional upon such matters as appear to the Secretary of State to be appropriate; and may be made with respect to a particular company or a description of companies specified in the direction: s 69(2) (prospectively repealed: see note 1). As to the meaning of 'company' see PARA 402 note 5.

5 The Secretary of State or the Welsh Ministers may by order made by statutory instrument adapt the provisions of the Local Government and Housing Act 1989 s 69 so as to make them applicable to trusts which are not charitable; and Pt V applies in relation to trusts which are subject to local authority influence by virtue of s 69 as so adapted as it applies in relation to companies which are subject to local authority influence: s 72(1) (prospectively repealed: see note 1). In the exercise of the power conferred by s 70 (see PARA 404), as applied in relation to trusts by s 72(1), the Secretary of State or the Welsh Ministers may make different provision for trusts as compared with companies: see s 72(2) (as so prospectively repealed). As to trusts generally see **TRUSTS**. At the date at which this volume states the law no orders had been made under s 72.

6 As to when a company is under the control of a local authority see PARA 402. As to the meaning of 'local authority' see PARA 402 note 6.

7 For these purposes, there is a business relationship between a company and a local authority at any time if any one or more of the following conditions is fulfilled:

644 (1) within a period of 12 months which includes that time the aggregate of the payments to the company by the authority or by another company which is under the control of the authority represents more than one-half of the company's turnover, as shown in its profit and loss account for the most recent financial year for which the company's auditors have made a report on the accounts or, if there is no such account, as estimated by the authority for the period of 12 months preceding the date of the estimate or for such part of that period as follows the formation of the company (Local Government and Housing Act 1989 s 69(3)(a) (prospectively repealed (see note 1)));

645 (2) more than one-half of the company's turnover referred to in head (1) above is derived from the exploitation of assets of any description in which the local authority or a company under the control of the authority has an interest (disregarding an interest in land which is in reversion on a lease granted for more than seven years) (s 69(3)(b) (as so prospectively repealed));

646 (3) the aggregate of:

13. (a) grants made either by the authority and being expenditure for capital purposes or by a company under the control of the authority; and

14

14. (b) the nominal value of shares or stock in the company which is owned by the authority or by a company under the control of the authority,
- 15
- 647 exceeds one-half of the net assets of the company (s 69(3)(c) (as so prospectively repealed));
- 648 (4) the aggregate of:
15. (a) grants falling within head (3)(a) above;
- 16
16. (b) loans or other advances made or guaranteed by the authority or by a company under the control of the authority; and
- 17
17. (c) the nominal value referred to in head (3)(b) above,
- 18
- 649 exceeds one-half of the fixed and current assets of the company (s 69(3)(d) (as so prospectively repealed));
- 650 (5) the company at that time occupies land by virtue of an interest which it obtained from the local authority or a company under the control of the authority and which it so obtained at less than the best consideration reasonably obtainable (s 69(3)(e) (as so prospectively repealed)); and
- 651 (6) the company intends at that time to enter into (or complete) a transaction and, when that is done, there will then be a business relationship between the company and the authority by virtue of any of heads (1)-(5) above (s 69(3)(f) (as so prospectively repealed)).

For these purposes, the reference in head (3) above to the net assets of the company is to be construed in accordance with the Companies Act 1985 s 152(2) (see **COMPANIES** vol 15 (2009) PARA 1223), the Companies Act 2006 s 677(2), (3), and 'fixed assets' means assets of a company that are intended for use on a continuing basis in the company's activities, and 'current assets' means assets not intended for such use: Local Government and Housing Act 1989 s 69(4) (amended by SI 2008/948).

8 Local Government and Housing Act 1989 s 69(1)(a) (prospectively repealed: see note 1). For these purposes, a person is at any time associated with a local authority if: (1) he is at that time a member of the authority; (2) he is at that time an officer of the authority; (3) he is at that time both an employee and either a director, manager, secretary or other similar officer of a company which is under the control of the authority; or (4) at any time within the preceding four years he has been associated with the authority by virtue of head (1) above: s 69(5) (as so prospectively repealed). In relation to a company which is an industrial and provident society, any reference in s 69 to the directors of the company is a reference to the members of the committee of management: s 69(8) (as so prospectively repealed).

If and to the extent that the Secretary of State and the Welsh Ministers by order so provide, a person is at any time associated with a local authority if:

- 652 (a) at that time he is, or is employed by or by a subsidiary of, a person who for the time being has a contractual relationship with the authority to provide: (i) advice with regard to the authority's interest in any company (whether existing or proposed to be formed); or (ii) advice with regard to the management of an undertaking or the development of land by a company (whether existing or proposed to be formed) with which it is proposed that the authority should enter into any lease, licence or other contract or to which it is proposed that the authority should make any grant or loan; or (iii) services which facilitate the exercise of the authority's rights in any company (whether by acting as the authority's representative at a meeting of the company or as a director appointed by the authority or otherwise) (see s 69(6)(a) (as so prospectively repealed));
- 653 (b) at any time within the preceding four years, he has been associated with the authority by virtue of head (2) or head (3) above (see s 69(6)(b) (as so prospectively repealed));
- 654 (c) he is at that time the spouse or civil partner of, or carries on business in partnership with, a person who is associated with the authority by virtue of head (1) above (see s 69(6)(c) (amended by the Civil Partnership Act 2004 Sch 27 para 134; and so prospectively repealed)); or

- 655 (d) he holds a relevant office in a political association or other body which, in the nomination paper of a person who is an elected member of the authority, formed part of that person's description (see the Local Government and Housing Act 1989 s 69(6)(d) (as so prospectively repealed)).

For the purposes of head (d) above, an office in a political association or body is relevant to a local authority in the following circumstances: (A) if the association or body is active only in the area of the local authority, any office in it is relevant; and (B) in any other case, an office is relevant only if it is in a branch or other part of the association or body which is active in the area of the local authority: s 69(7) (as so prospectively repealed). At the date at which this volume states the law no orders had been made under s 69.

9 Local Government and Housing Act 1989 s 69(1)(b) (prospectively repealed: see note 1).

10 Local Government and Housing Act 1989 s 69(1)(c) (prospectively repealed: see note 1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/ (6) COMPANIES AND ENTITIES/(i) Companies/404. Requirements for companies under control or subject to the influence of local authorities.

404. Requirements for companies under control or subject to the influence of local authorities.

Until a day to be appointed the following provisions have effect¹. In relation to companies² under the control of local authorities³ and companies subject to the influence of local authorities⁴, the Secretary of State or the Welsh Ministers may by order⁵ make provision regulating, forbidding or requiring the taking of certain actions or courses of action⁶. Such an order may: (1) make provision in relation to those companies which are arm's length companies⁷ different from that applicable to companies which are not⁸; and (2) make provision in relation to companies under the control of local authorities different from that applicable in relation to companies under the influence of local authorities⁹. An order may make provision requiring a company or local authority to obtain the consent of the Secretary of State, or the Welsh Ministers, or of the Audit Commission¹⁰ for Local Authorities and the National Health Service in England or of the Auditor General for Wales, before taking any particular action or course of action¹¹. It is the duty of every local authority to ensure, so far as practicable, that any company under its control complies with any provisions so made¹² which are for the time being applicable to it¹³; and if a local authority fails to perform that duty in relation to any company, any payment made by the authority to that company and any other expenditure incurred by the authority in contravention of any such provisions is deemed for the purposes of the Audit Commission Act 1998¹⁴ and Part 2 of the Public Audit (Wales) Act 2004 to be expenditure which is unlawful¹⁵.

In order to secure compliance, in relation to companies subject to the influence of a local authority, with the provisions made, an order may prescribe requirements to be complied with by the local authority in relation to conditions to be included in such leases, licences, contracts, gifts, grants or loans as may be so prescribed which are made with or to a company subject to the influence of the local authority¹⁶. It is the duty of a local authority to comply with any such requirements for the time being applicable to it¹⁷; and if a local authority fails to perform that duty, any expenditure which is incurred by the local authority under the lease, licence, contract, gift, grant or loan in question is deemed for the purposes of the Audit Commission Act 1998 and Part 2 of the Public Audit (Wales) Act 2004 to be expenditure which is unlawful¹⁸.

1 The Local Government and Housing Act 1989 Pt V (ss 67-73) is repealed by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 16 as from a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

- 2 As to the meaning of 'company' see PARA 402 note 5.
- 3 As to when a company is under the control of a local authority see PARA 402. As to the meaning of 'local authority' see PARA 402 note 6.
- 4 As to when a company is subject to the influence of a local authority see PARA 403.
- 5 As to the Secretary of State and the Welsh Ministers see PARAS 96-97. An order under the Local Government and Housing Act 1989 s 70(1) may be made in relation to all authorities, particular authorities or particular descriptions of local authority: s 70(6) (added by the Local Government Act 2003 Sch 3 para 3).
- 6 Local Government and Housing Act 1989 s 70(1) (prospectively repealed: see note 1). As to the power to make orders see further s 67(4). In the exercise of the power conferred by s 70, as applied in relation to trusts by s 72(1) (see PARA 403 note 5), the Secretary of State or the Welsh Ministers may make different provision for trusts as compared with companies: s 72(2) (as so prospectively repealed). As to trusts generally see **TRUSTS**. As to the order that has been made under s 70 see the Local Authorities (Companies) Order 1995, SI 1995/849 (amended by SI 2004/533; SI 2005/757).
- 7 As to the meaning of 'arm's length company' see PARA 402.
- 8 Local Government and Housing Act 1989 s 70(1)(a) (prospectively repealed: see note 1).
- 9 Local Government and Housing Act 1989 s 70(1)(b) (prospectively repealed: see note 1).
- 10 As to the Audit Commission see PARA 744 et seq.
- 11 Local Government and Housing Act 1989 s 70(5) (amended by the Public Audit (Wales) Act 2004 Sch 2 para 12(4); the Local Government and Public Involvement in Health Act 2007 Sch 9 para 2(2)(b); and prospectively repealed (see note 1)).
- 12 le made under the Local Government and Housing Act 1989 s 70(1).
- 13 Local Government and Housing Act 1989 s 70(2) (amended by the Local Government Act 2003 Sch 7 para 30(2); and prospectively repealed: see note 1).
- 14 See PARA 744 et seq.
- 15 Local Government and Housing Act 1989 s 70(2) (amended by the Audit Commission Act 1998 Sch 3 para 18(3)(a); and prospectively repealed: see note 1).
- 16 Local Government and Housing Act 1989 s 70(3) (amended by the Local Government Act 2003 Sch 7 para 30(3); and prospectively repealed: see note 1).
- 17 Local Government and Housing Act 1989 s 70(4) (amended by the Local Government Act 2003 Sch 7 para 30(4); and prospectively repealed: see note 1).
- 18 Local Government and Housing Act 1989 s 70(4) (amended by the Audit Commission Act 1998 Sch 3 para 18(3)(b); and the Public Audit (Wales) Act 2004 Sch 2 para 12(3); and prospectively repealed: see note 1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/ (6) COMPANIES AND ENTITIES/(i) Companies/405. Authorities acting jointly and by committees.

405. Authorities acting jointly and by committees.

Until a day to be appointed the following provisions have effect¹. In any case where: (1) apart from these provisions², a company³ would not be under the control of any one local authority⁴; but (2) if the actions, powers and interests of two or more local authorities were treated as those of one authority alone, the company would be under the control of that one authority⁵, then the company is to be treated for the purposes of Part V of the Local Government and Housing Act 1989⁶ as under the control of each of the two or more local authorities mentioned in head (2) above⁷.

In any case where, apart from these provisions, a company would not be treated as being subject to the influence of any one local authority⁸, it must be treated as being subject to the influence of each of a number of local authorities (a 'group') if certain conditions⁹ are fulfilled with respect to the company and the group of authorities¹⁰.

For the purposes of Part V of the Local Government and Housing Act 1989, anything done, and any power exercisable, by a committee or sub-committee of a local authority, or by any of the authority's officers or, where a local authority is operating executive arrangements under the Local Government Act 2000 Part II, by the authority's executive, any committee of the executive, or any member of the executive, is to be treated as done or, as the case may be, exercisable by the authority¹¹; and anything done, and any power exercisable, by a joint committee of two or more local authorities or by a sub-committee of such a joint committee is to be treated as done or, as the case may be, exercisable by each of the local authorities concerned¹².

1 The Local Government and Housing Act 1989 Pt V (ss 67-73) is repealed by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 16 as from a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

2 Ie the provisions of the Local Government and Housing Act 1989 s 73.

3 As to the meaning of 'company' see PARA 402 note 5.

4 Local Government and Housing Act 1989 s 73(1)(a) (prospectively repealed: see note 1). As to when a company is under the control of a local authority see PARA 402. As to the meaning of 'local authority' see PARA 402 note 6.

5 Local Government and Housing Act 1989 s 73(1)(b) (prospectively repealed: see note 1).

6 Ie the Local Government and Housing Act 1989 Pt V (ss 67-73).

7 Local Government and Housing Act 1989 s 73(1) (prospectively repealed: see note 1).

8 As to when a company is subject to the influence of a local authority see PARA 403.

9 The conditions are:

656 (1) that at least one of the conditions in the Local Government and Housing Act 1989 s 69(3) (a)-(e) (see PARA 403) would be fulfilled: (a) if any reference therein to the company being under the control of a local authority were a reference to its being under the control of any one of the authorities in the group or of any two or more of them taken together; and (b) if any other reference therein to the local authority were a reference to any two or more of the authorities in the group taken together (s 73(3)(a) (prospectively repealed: see note 1)); and

657 (2) that at least one of the conditions in s 69(1)(a)-(c) (see PARA 403) would be fulfilled if any reference therein to the local authority were a reference to those local authorities who are taken into account under head (1)(a) or head (1)(b) taken together (s 73(3)(b) (as so prospectively repealed)); and

658 (3) that if the condition (or one of the conditions) which would be fulfilled as mentioned in head (2) is that in s 69(1)(a) (see PARA 403), then, so far as concerns each local authority in the group, at least one person who, in terms of s 69(5) (see PARA 403), is associated with that authority has the right to vote at a general meeting of the company (s 73(3)(c) (as so prospectively repealed)); and

659 (4) that, if head (3) does not apply, then, so far as concerns each local authority in the group, a person who, in terms of s 69(5) (see PARA 403), is associated with the authority is a director of the company (s 73(3)(d) (as so prospectively repealed)).

10 Local Government and Housing Act 1989 s 73(2) (prospectively repealed: see note 1).

11 Local Government and Housing Act 1989 s 73(4) (amended by SI 2007/2237; SI 2002/808; and prospectively amended (see note 1)). As to committees and sub-committees see PARA 371 et seq.

12 Local Government and Housing Act 1989 s 73(5) (prospectively amended: see note 1). As to joint committees see PARA 380.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/ (6) COMPANIES AND ENTITIES/(ii) Entities/406. Entities controlled etc by local authorities.

(ii) Entities

406. Entities controlled etc by local authorities.

The Secretary of State or the Welsh Ministers¹ may make an order² which requires, prohibits or regulates the taking of specified actions by entities³ connected with a local authority⁴. The order may make provision in relation to every entity connected with a local authority and such entities of a particular description⁵ and may also include provision which requires, prohibits or regulates:

- 360 (1) the taking of specified actions by a local authority in relation to entities connected with the local authority⁶;
- 361 (2) the taking of specified actions by members or officers of a local authority who are qualifying persons⁷.

The Secretary of State may make such an order in relation to all English local authorities⁸, English local authorities of particular descriptions and particular English local authorities⁹. The Welsh Ministers may make such an order in relation to all Welsh local authorities¹⁰, Welsh local authorities of particular descriptions and particular Welsh local authorities¹¹.

The appropriate authority¹² may give a direction exempting a particular entity, or entities of a particular description, or the trustees of a particular trust, or of trusts of a particular description, from such an order¹³ or specified¹⁴ provisions of such an order¹⁵. The direction may provide for an exemption to have effect for a specified period or subject to specified conditions¹⁶ and the direction may be varied or revoked by a subsequent direction of the appropriate authority¹⁷.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 An order under the Local Government and Public Involvement in Health Act 2007 s 212 may include provision which requires, prohibits or regulates the taking of specified actions by the trustees of a relevant trust; the taking of specified actions by a local authority in relation to the trustees of trusts connected with that local authority; the taking of specified actions by a member or officer of a local authority who is a trustee of a trust connected with that local authority: s 213(2). For the purpose of s 213 'relevant trust' means a trust connected with a local authority: s 213(1). Provision included in an order by virtue of s 212 may relate to the trustees of every relevant trust; the trustees of relevant trusts of a particular description: 213(3). For the purposes of this section a trust is 'connected with' a local authority at any time if, according to proper practices in force at that time, financial information about the trust must be included in the local authority's statement of accounts for the financial year in which that time falls: s 213(4).

3 For these purposes 'actions' includes courses of action, 'specified' means specified, or of a description specified, by the order and 'entities' means any entity, whether or not a legal person: Local Government and Public Involvement in Health Act 2007 s 212(7).

4 See the Local Government and Public Involvement in Health Act 2007 s 212(1)-(3). As to the meaning of 'local authority' see PARA 23. For the purposes of s 212 an entity is 'connected with' a local authority at any time if it is an entity other than the local authority and according to proper practices in force at that time, financial information about the entity must be included in the local authority's statement of accounts for the financial

year in which that time falls: s 212(6). 'Financial year' means a period for which accounts of the local authority must be prepared by reason of the Audit Commission Act 1998 or the Public Audit (Wales) Act 2004 s 13: Local Government and Public Involvement in Health Act 2007 s 212(7).

5 See the Local Government and Public Involvement in Health Act 2007 s 212(5).

6 Local Government and Public Involvement in Health Act 2007 s 212(4)(a). An order under s 212 may make provision requiring an entity, a local authority or trustees to obtain the consent of the appropriate person before taking any particular actions: s 214(1). 'Appropriate person' means, in relation to an order made by the Secretary of State, the Audit Commission and, in relation to an order made by the Welsh Ministers, the Auditor General for Wales: s 214(2). The provision that may be included in an order by virtue of s 212(4)(a) includes in particular provision:

660 (1) requiring a local authority to make arrangements for enabling questions about an entity's activities to be put to members or officers of the authority who are qualifying persons (s 214(3)(a));

661 (2) prohibiting a local authority from taking action (including refraining from exercising a right) which would have the result that a person of a specified description becomes a qualifying person (s 214(3)(b));

662 (3) requiring a local authority to ensure so far as practicable that entities comply with provisions of the order applicable to them (s 214(3)(c)).

'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England: s 214(10).

The provision that may be included in an order by virtue of s 213(2)(b) includes in particular provision:

663 (a) requiring a local authority to make arrangements for enabling questions about a trust connected with the authority to be put to members or officers of the authority who are trustees (s 214(4)(a));

664 (b) prohibiting a local authority from taking action (including refraining from exercising a right) which would have the result that a person of a specified description becomes a trustee of a trust connected with the authority (s 214(4)(b));

665 (c) requiring a local authority to ensure so far as practicable that trustees comply with provisions of the order applicable to them (s 214(4)(c)).

Nothing in s 214(1)-(4) affects the generality of s 212(1) or (4) or 213(2): s 214(5). Where an order under s 212 makes provision in relation to entities of a particular description or makes provision in relation to the trustees of trusts of a particular description, it may provide for any expression used in identifying that description of entity or trust to have the meaning for the time being given by a relevant document identified by the order: s 214(6). 'Relevant document':

666 (i) means a document that (at the time the power under s 214(6) is exercised) is a document identified for the purposes of the Local Government Act 2003 s 21(2)(b) by regulations made under that provision (Local Government and Public Involvement in Health Act 2007 s 214(7)(a)); and

667 (ii) includes a document so identified by virtue of the Local Government Act 2003 s 21(5) (documents not yet existing) (Local Government and Public Involvement in Health Act 2007 s 214(7)(b)).

An order under s 212 may include incidental, consequential, transitional or supplementary provision: s 214(8).

7 Local Government and Public Involvement in Health Act 2007 s 212(4)(b). See note 6.

8 For these purposes 'English local authority' means a local authority in England: Local Government and Public Involvement in Health Act 2007 s 212(7).

9 Local Government and Public Involvement in Health Act 2007 s 212(2).

10 'Welsh local authority' means a local authority in Wales: Local Government and Public Involvement in Health Act 2007 s 212(7).

11 Local Government and Public Involvement in Health Act 2007 s 212(3).

12 For this purpose 'appropriate authority' means in relation to an order made by the Secretary of State, the Secretary of State; in relation to an order made by the Welsh Ministers, the Welsh Ministers: Local Government and Public Involvement in Health Act 2007 s 215(4).

13 Ie under the Local Government and Public Involvement in Health Act 2007 s 212.

14 For this purpose 'specified' means specified by the direction: Local Government and Public Involvement in Health Act 2007 s 215(5).

15 Local Government and Public Involvement in Health Act 2007 s 215(1).

16 Local Government and Public Involvement in Health Act 2007 s 215(2).

17 Local Government and Public Involvement in Health Act 2007 s 215(3).

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(7) CONTRACTING OUT

(i) In general

407. Contracting out of functions of local authorities.

Where a minister¹ by order so provides, certain functions² may be exercised by, or by employees³ of, such person, if any, as may be authorised in that behalf by the local authority whose function it is⁴. A minister must not make an order under these provisions in relation to a local authority without first consulting such representatives of local government as he considers appropriate⁵. Such an order may provide that a function may be exercised, and an authorisation given by virtue of such an order may, subject to the provisions of the order, authorise the exercise of the function: (1) either wholly or to such extent as may be specified in the order or authorisation⁶; (2) either generally or in such cases or areas as may be so specified⁷; and (3) either unconditionally or subject to the fulfilment of such conditions as may be so specified⁸. An authorisation given by virtue of such an order is to be for such period, not exceeding ten years, as is specified in the authorisation⁹, and it may be revoked at any time by the local authority by whom the authorisation is given¹⁰. It does not prevent that local authority or any other person from exercising the function to which the authorisation relates¹¹.

1 'Minister' means the holder of an office in Her Majesty's government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council: see the Ministers of the Crown Act 1975 s 8(1); and the Deregulation and Contracting Out Act 1994 s 79(1). For these purposes, any reference to a minister includes references to the Forestry Commissioners or to the Charity Commission and any reference to the Charity Commission included a reference to a member or member of staff of the Commission and any reference to a local authority included references to a joint board and a joint committee: s 79(3) (amended by the Charities Act 2006 Sch 8 para 179(2)). However, nothing in the Deregulation and Contracting Out Act 1994 s 79(3) is to be construed as enabling those Commissioners or that Commission to make an order under s 70: s 79(4) (amended by the Charities Act 2006 Sch 8 para 179(3); and SI 2001/3686). As to the meaning of 'United Kingdom' see PARA 116 note 18. As to the Forestry Commission see **FORESTRY** vol 52 (2009) PARA 34 et seq.

2 For these purposes, 'function', in relation to a local authority, includes any power to do any thing which is calculated to facilitate, or is conducive or incidental to, the exercise of a function: Deregulation and Contracting Out Act 1994 s 79(1). Section 70 applies to any function of a local authority: (1) which is conferred by or under any enactment; and (2) which, by virtue of the Local Government Act 1972 s 101 (see PARA 370 et seq), the Regional Development Agencies Act 1998 Sch 2 para 7 or the Greater London Authority Act 1999 s 38 or s 380 or Sch 10 para 7 (see **LONDON GOVERNMENT**), may be exercised by an officer of the authority; and (3) which is not excluded by the Deregulation and Contracting Out Act 1994 s 71: s 70(1), (1ZA) (s 70(1ZA), (1ZB) added by

the Local Government and Public Involvement in Health Act 2007 s 239(1)(b)). In its application in relation to a local authority which is a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES**), the Deregulation and Contracting Out Act 1994 s 70(1) above has effect as if s 70(2) were omitted: s 70(1ZB) (as so added).

Section 70 also applies to any function of a local authority (a) if, and to the extent that, it is the responsibility of an executive of that local authority under executive arrangements, within the meaning of the Local Government Act 2000 Pt II (ss 10-48); (b) which is conferred by or under any enactment; (c) which, by virtue of any of ss 14-16, or any provisions made under ss 17-20 (provisions with respect to executive arrangements--discharge of functions etc), may be exercised by an officer of the local authority; and (d) which is not excluded by the Deregulation and Contracting Out Act 1999 s 71: s 70(1A) (added by SI 2001/2237; SI 2002/808).

Subject to the Deregulation and Contracting Out Act 1994 s 71(2), (3), a function is excluded from s 70 if: (i) its exercise would constitute the exercise of jurisdiction of any court or of any tribunal which exercises the judicial power of the state; or (ii) its exercise, or a failure to exercise it, would necessarily interfere with or otherwise affect the liberty of any individual; or (iii) it is a power or right of entry, search or seizure into or of any property; or (iv) it is a power or duty to make subordinate legislation: s 71(1). Heads (ii) and (iii) do not exclude any function of the official receiver attached to any court: s 71(2). Head (iii) does not exclude any function of a local authority under, or under regulations made under, any of the following enactments: (A) the General Rate Act 1967 Pt VI (ss 96-107) (repealed); (B) the Local Government Finance Act 1988 Sch 4 paras 5-7 (repealed); (C) the Local Government Finance Act 1988 Sch 9 para 3(2)(b) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 172); (D) the Local Government Finance Act 1992 s 14(3), Sch 4 paras 5-7 (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 324, 333-334); (E) the Local Government Act 2003 s 48; and (F) as from a day to be appointed the Planning Act 2008 ss 217, 218: see the Deregulation and Contracting Out Act 1994 s 71(3) (amended by the Local Government Act 2003 Sch 7 para 59; and prospectively amended by the Planning Act 2008 s 224(3)). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'local authority' see PARA 23. As to functions of local authorities generally see PARA 579 et seq. As to the discharge of functions generally see PARA 369 et seq. As to officers see PARA 425 et seq.

3 For these purposes, 'employee' in relation to a body corporate, includes any director or other officer of that body: Deregulation and Contracting Out Act 1994 s 79(1).

4 Deregulation and Contracting Out Act 1994 s 70(2). As to the application of Pt II (ss 69-74) to Northern Ireland see s 78. As to contracting out functions of ministers and office-holders see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 364. As to restrictions on the disclosure of information where functions of local authorities have been contracted out see s 75, Sch 15; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 364. As to restrictions on the disclosure of information generally see **CONFIDENCE AND DATA PROTECTION**.

Where at any time an order is in force under s 70 in relation to any function of a local authority ('authority A') and arrangements are in force under the Local Government Act 1972 s 101 (see PARA 370) for the exercise of that function by another local authority ('authority B'), it is to be an implied term of those arrangements that, except with the consent of authority A, authority B must not give any authorisation by virtue of the order in relation to that function: Deregulation and Contracting Out Act 1994 s 70(5). Any reference in s 70(5) to arrangements under the Local Government Act 1972 s 101 (see PARA 370) includes a reference to an authorisation under the Greater London Authority Act 1999 s 38 or s 380 (see **LONDON GOVERNMENT**): Deregulation and Contracting Out Act 1994 s 70(6) (added by the Greater London Authority Act 1999 s 40(1), (3)). Where at any time:

- 668 (1) an order is in force under the Deregulation and Contracting Out Act 1994 s 70 in relation to any function of a local authority ('authority A') (s 70(7)(a) (added by SI 2001/2237; SI 2002/808));
- 669 (2) that function, to any extent, is the responsibility of an executive of authority A under executive arrangements (Deregulation and Contracting Out Act 1994 s 70(7)(b) (as so added)); and
- 670 (3) arrangements are in force under regulations made under the Local Government Act 2000 s 19 (discharge of functions of and by another local authority) (see PARA 361) for the exercise of that function, to any extent, by another local authority ('authority B') or by any executive of authority B (Deregulation and Contracting Out Act 1994 s 70(7)(c) (as so added)),

it is an implied term of those arrangements that authority B or, as the case may be, the executive of authority B, must not give any authorisation by virtue of the order in relation to that function except with the consent of the executive of authority A: s 70(7) (as so added). As to the meaning of 'executive arrangements' see the Local Government Act 2000; and PARA 303.

Orders are in force under the Deregulation and Contracting Out Act 1994 s 70 permitting the following functions to be exercised by the person so authorised:

- 671 (a) the function conferred under the Children Act 1989 s 53(3)(a) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 967) of managing a community home (except the function of managing a community home, or any part of a community home, which is provided for the purpose of restricting the liberty of children under the age of eighteen) may be exercised by, or by the employees of, such person (if any) as may be authorised in that behalf by a local authority (see the Contracting Out (Management Functions in relation to certain Community Homes) Order 1996, SI 1996/586);
- 672 (b) functions conferred on an authority by or under the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, may, to a specified extent be exercised by, or by the employees of, such person (if any) as may be authorised to exercise them by the authority whose functions they are (see the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996, SI 1996/1880, art 2);
- 673 (c) functions relating to the investment of money may, to a specified extent, be exercised by, or by the employees of, such person (if any) as may be authorised to exercise them by the authority whose functions they are (see the Local Authorities (Contracting Out of Investment Functions) Order 1996, SI 1996/1883);
- 674 (d) certain functions of an authority conferred by or under the Housing Act 1996 Pt VI (allocation of housing accommodation) and Pt VII (homelessness) may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the authority whose function it is (see the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 1996, SI 1996/3205);
- 675 (e) any function of a local highway authority which is conferred by or under specified provisions may be exercised by, or by employees of, such person as may be authorised in that behalf by the local highway authority whose function it is and any function of Transport for London which falls within those provisions may be exercised by, or by the employees of, such person (if any) as may be authorised by Transport for London to do (see the Local Authorities (Contracting Out of Highway Functions) Order 1999, SI 1999/2106; the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001, SI 2001/4061; and the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order 2006, SI 2006/91, art 3);
- 676 (f) certain functions of a local authority relating to work-focused interviews may to the extent specified be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by the authority whose function it is and similar provisions apply in relation to the Secretary of State (see the Contracting Out (Functions relating to Social Security) Order 2000, SI 2000/898);
- 677 (g) any function of a local education authority in England which is conferred by or under specified provisions may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is (see the Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928 (amended by SI 2003/2704));
- 678 (h) certain functions of a local authority in relation to council tax benefit, discretionary housing payments and housing benefit under specified provisions may be exercised by, or by employees of, such a person (if any) authorised to do so by that authority (see the Contracting Out (Functions of Local Authorities: Income-Related Benefits) Order 2002, SI 2002/1888);
- 679 (i) the functions of a billing authority conferred by or under the Local Government Act 2003 Pt 4 or regulations under s 48 (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 220 et seq) in relation to the imposition, administration, collection, recovery and application of Business Improvement Districts levy may, subject to specified conditions, be exercised by such contractor as may be authorised to exercise them by the billing authority whose functions they are (see the Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2005, SI 2005/215);
- 680 (j) functions of Transport for London consisting of, or relating to, the investment of any sum, permitted by virtue of the Local Government Act 2003 s 12, for the time being held by it may be exercised by, or by the employees of, such person (if any) as may be authorised by Transport for London to do so (see the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order 2006, SI 2006/91, art 2);

681 (k) certain functions conferred on a local highway authority may be exercised by, or by employees of, such a person (if any) as may be authorised to do so by the authority whose function it is (see the Contracting Out (Highway Functions) Order 2009, SI 2009/721).

5 See the Deregulation and Contracting Out Act 1994 s 70(3)(a).

6 Deregulation and Contracting Out Act 1994 ss 69(4)(a), 70(4).

7 Deregulation and Contracting Out Act 1994 ss 69(4)(b), 70(4).

8 Deregulation and Contracting Out Act 1994 ss 69(4)(c), 70(4).

9 Deregulation and Contracting Out Act 1994 ss 69(5)(a), 70(4).

10 Deregulation and Contracting Out Act 1994 ss 69(5)(b), 70(4).

11 Deregulation and Contracting Out Act 1994 ss 69(5)(c), 70(4).

UPDATE

407 Contracting out of functions of local authorities

NOTE 4--Head (e), SI 1999/2106, SI 2001/4061 replaced, SI 2006/91 art 3 revoked: Contracting Out (Highway Functions) Order 2009, SI 2009/721.

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408. Contracting out functions of best value authorities.

The statutory provisions relating to contracting out functions of local authorities¹ apply in relation to functions² of any relevant best value authority³ as they apply in relation to functions of local authorities⁴. An order to contract out functions of best value authorities may only be made by the Secretary of State⁵ if he considers the order necessary or expedient for the purpose of permitting or facilitating compliance with the requirements of Part I of the Local Government Act 1999⁶.

1 Ie the Deregulation and Contracting Out Act 1994 s 70: see PARA 407. As to the meaning of 'local authority' see PARA 23. As to the functions of local authorities generally see PARA 579 et seq.

2 Ie other than excluded functions within the meaning of the Deregulation and Contracting Out Act 1994 s 71: see PARA 407 note 2.

3 For the purposes of the Local Government Act 1999 s 18 'relevant best value authority' means a best value authority which is not a local authority for the purposes of the Deregulation and Contracting Out Act 1994 s 70 (see PARA 407): the Local Government Act 1999 s 18(3) (added by the Local Government and Public Involvement in Health Act 2007 s 239(5)(b)). As to best value authorities see PARA 688.

4 Local Government Act 1999 s 18(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 239(5)(a)).

5 See the Local Government Act 1999 s 18(2)(a). As to the Secretary of State see PARA 96.

6 See the Local Government Act 1999 s 18(2)(b).

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409. Effect of contracting out.

Where by virtue of a contracting out order¹ a person is authorised to exercise any function of a local authority², anything done or omitted to be done by or in relation to the authorised person, or an employee³ of his, in or in connection with the exercise or purported exercise of the function is to be treated for all purposes as done or omitted to be done by or in relation to that authority⁴. However, this does not apply: (1) for the purposes of so much of any contract made between the authorised person and the local authority as relates to the exercise of the function⁵; or (2) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person or an employee of his⁶.

1 le under the Deregulation and Contracting Out Act 1994 s 70: see PARA 407.

2 See the Deregulation and Contracting Out Act 1994 s 72(1). As to the meaning of 'local authority' see PARA 23. As to the meaning of 'functions' see PARA 407 note 2. As to the discharge of functions generally see PARA 369 et seq.

3 As to the meaning of 'employee' see PARA 407 note 3.

4 See the Deregulation and Contracting Out Act 1994 s 72(2)(b).

5 See the Deregulation and Contracting Out Act 1994 s 72(3)(a).

6 Deregulation and Contracting Out Act 1994 s 72(3)(b).

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(ii) Termination of Contract

410. Termination of contracting out.

Where by virtue of a contracting out order¹ a person is authorised to exercise any function of a local authority² and the order or authorisation is revoked at a time when a relevant contract³ is subsisting⁴, the authorised person is entitled to treat the relevant contract as repudiated by the local authority, and not as frustrated by reason of the revocation⁵.

1 le under the Deregulation and Contracting Out Act 1994 s 70: see PARA 407.

2 See the Deregulation and Contracting Out Act 1994 s 73(1)(a). As to the meaning of 'local authority' see PARA 23. As to the meaning of 'function' see PARA 407 note 2. As to the discharge of functions generally see PARA 369 et seq.

3 For the purposes of the Deregulation and Contracting Out Act 1994 s 73, 'relevant contract' means so much of any contract made between the authorised person and the local authority as relates to the exercise of the function: s 73(3).

4 Deregulation and Contracting Out Act 1994 s 73(1)(b).

5 Deregulation and Contracting Out Act 1994 s 73(2).

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411. Functions to include power to enter into contracts.

Every statutory provision conferring or imposing a function on a local authority¹ confers power on the local authority to enter into a contract with another person for the provision or making available of assets² or services, or both, whether or not together with goods, for the purposes of, or in connection with, the discharge of the function by the local authority³.

Where a local authority enters into such a contract (the 'provision contract') under any statutory provision⁴, and in connection with the provision contract, a person (the 'financier') makes a loan to, or provides any other form of finance for, a party to the provision contract other than the local authority⁵, the statutory provision also confers power on the local authority to enter into a contract with the financier, or any insurer of or trustee for the financier, in connection with the provision contract⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 For these purposes, 'assets' means assets of any description, whether tangible or intangible, including, in particular, land, buildings, roads, works, plant, machinery, vehicles, vessels, apparatus, equipment and computer software: Local Government (Contracts) Act 1997 s 1(4). At the date at which this volume states the law no regulations had been made under s 1.

3 Local Government (Contracts) Act 1997 s 1(1). Sections 1-9 apply to any contract which a local authority enters into after 12 June 1997: s 12(3). As to the discharge of functions generally see PARA 369 et seq.

4 Local Government (Contracts) Act 1997 s 1(2)(a).

5 Local Government (Contracts) Act 1997 s 1(2)(b).

6 Local Government (Contracts) Act 1997 s 1(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(7) CONTRACTING OUT/(iii) Certified Contracts/412. Certified contracts to be intra vires.

(iii) Certified Contracts

412. Certified contracts to be intra vires.

Where a local authority¹ has entered into a contract², the contract, if it is a certified contract³, is to have effect (and is deemed always to have had effect) as if the local authority had had power to enter into it, and had exercised that power properly in entering into it⁴. A contract entered into by a local authority is a certified contract if the certification requirements have been satisfied by the local authority with respect to the contract and they were so satisfied before the end of the certification period⁵. A contract entered into by a local authority is to be treated as a certified contract during the certification period if the contract provides that the certification requirements⁶ are intended to be satisfied by the local authority with respect to the contract before the end of that period⁷. Where a local authority has entered into a contract

which is a certified contract (the 'existing contract') and the existing contract is replaced by a contract entered into by it with a person or persons not identical with the person or persons with whom it entered into the existing contract, the replacement contract is also a certified contract if: (1) the period for which it operates or is intended to operate ends at the same time as the period for which the existing contract was to operate⁸; and (2) apart from that, its provisions are the same as those of the existing contract⁹.

The application of these provisions¹⁰ in relation to a contract entered into by a local authority does not affect any claim for damages made by a person who is not, and has never been, a party to the contract in respect of a breach by the local authority of any duty to do, or not to do, something before entering into the contract¹¹.

1 As to the meaning of 'local authority' see PARA 23.

2 As to contracts entered into by local authorities see PARA 411.

3 See the text to note 6.

4 Local Government (Contracts) Act 1997 s 2(1). However, s 2(1) is subject to special provisions about judicial reviews and audit reviews under s 5 (see PARA 414): s 2(6). As to the application of ss 1-9 see PARA 411 note 3.

5 Local Government (Contracts) Act 1997 s 2(2). For these purposes, the 'certification period', in relation to a contract entered into by a local authority, means the period of six weeks beginning with the day on which the local authority entered into the contract: s 2(5). In relation to a contract entered into before 30 December 1997, the 'certification period' means the period of six weeks beginning with that day: s 12(3).

6 As to the certification requirements see PARA 413.

7 Local Government (Contracts) Act 1997 s 2(3).

8 Local Government (Contracts) Act 1997 s 2(4)(a).

9 Local Government (Contracts) Act 1997 s 2(4)(b).

10 I.e. the Local Government (Contracts) Act 1997 s 2(1): see the text and notes 1-4.

11 Local Government (Contracts) Act 1997 s 2(7). The duty referred to in the text includes, in particular, any such duty imposed by a statutory provision for giving effect to any Community obligation relating to public procurement (see PARA 418) or by the Local Government Act 1988 s 17(1) (see PARA 497): Local Government (Contracts) Act 1997 s 2(7).

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413. Certification requirements.

In relation to a contract entered into by a local authority¹ the certification requirements are²:

- 362 (1) the requirement that the local authority must have issued a certificate, whether before or after the contract is entered into: (a) including details of the period for which the contract operates or is to operate³; (b) describing the purpose of the contract⁴; (c) containing a statement that the contract is or is to be a certain type of contract⁵; (d) stating that the local authority had or has power to enter into the contract and specifying the statutory provision, or each of the statutory provisions, conferring the power⁶; (e) stating that a copy of the certificate has been or is to be given to each person to whom a copy is required to be given by

- regulations⁷; (f) dealing in a manner prescribed by regulations with any matters required by regulations to be dealt with in certificates⁸; and (g) confirming that the local authority has complied with or is to comply with any requirement imposed by regulations with respect to the issue of certificates⁹;
- 363 (2) the requirement that the local authority must have secured that the certificate is signed by any person who is required by regulations to sign it¹⁰; and
- 364 (3) the requirement that the local authority must have obtained consent to the issue of a certificate from each of the persons with whom the local authority has entered, or is to enter, into the contract¹¹.

Where the certification requirements have been satisfied in relation to a contract by a local authority, the certificate which has been issued is to have effect (and is deemed always to have had effect) as if the local authority had had power to issue it, and had exercised that power properly in issuing it¹². A certificate which has been so issued is not invalidated by reason that anything in the certificate is inaccurate or untrue¹³.

Where the certification requirements have been satisfied in relation to a contract by a local authority¹⁴, the local authority is to secure that throughout the period for which the contract operates a copy of the certificate which has been issued is open to inspection by members of the public at all reasonable times without payment¹⁵, and that members of the public are afforded facilities for obtaining copies of that certificate on payment of a reasonable fee¹⁶.

1 As to the meaning of 'local authority' see PARA 23. As to contracts entered into by local authorities see PARA 411.

2 See the Local Government (Contracts) Act 1997 s 3(1). As to the application of ss 1-9 see PARA 411 note 3.

3 Local Government (Contracts) Act 1997 s 3(2)(a).

4 Local Government (Contracts) Act 1997 s 3(2)(b).

5 Local Government (Contracts) Act 1997 s 3(2)(c). The type of contract referred to in the text is one falling within s 4(3) or s 4(4). A contract entered into by a local authority falls within s 4(3) if: (1) it is entered into with another person for the provision or making available of services (whether or not together with assets or goods) for the purposes of or in connection with, the discharge by the local authority of any of its functions; and (2) it operates, or is intended to operate, for a period of at least five years: s 4(3). A contract entered into by a local authority falls within s 4(4) if it is entered into, in connection with a contract falling within s 4(3), with: (a) a person who, in connection with that contract, makes a loan to, or provides any other form of finance for, a party to that contract other than the local authority; or (b) any insurer of or trustee for such a person: s 4(4). Regulations may be made amending the provisions of s 4(3) or s 4(4): s 4(5). At the date at which this volume states the law no regulations had been made under s 4. As to the meaning of 'assets' see PARA 411 note 2. As to the discharge of functions generally see PARA 369 et seq.

6 Local Government (Contracts) Act 1997 s 3(2)(d).

7 Local Government (Contracts) Act 1997 s 3(2)(e). As to the regulations that have been made under s 3 see the Local Authorities (Contracts) Regulations 1997, SI 1997/2862 (amended in relation to England by SI 2000/1033; SI 2001/723 and in relation to Wales by SI 2005/671).

8 Local Government (Contracts) Act 1997 s 3(2)(f).

9 Local Government (Contracts) Act 1997 s 3(2)(g).

10 Local Government (Contracts) Act 1997 s 3(3).

11 Local Government (Contracts) Act 1997 s 3(4).

12 Local Government (Contracts) Act 1997 s 4(1).

13 Local Government (Contracts) Act 1997 s 4(1).

14 le any authority with respect to the finances of which the Local Government and Housing Act 1989 Pt IV (ss 39-66) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 558 et seq) has effect at the time in question: see the Local Government (Contracts) Act 1997 ss 1(3)(a), 4(2).

15 Local Government (Contracts) Act 1997 s 4(2)(a).

16 Local Government (Contracts) Act 1997 s 4(2)(b).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(7) CONTRACTING OUT/(iv) Judicial and Audit Review/414. Judicial and audit reviews.

(iv) Judicial and Audit Review

414. Judicial and audit reviews.

The provisions by which contracts entered into by local authorities¹ are intra vires² do not apply for the purposes of determining any question arising on an application for judicial review³, or on an audit review⁴, as to whether a local authority had power to enter into a contract, or exercised any power properly in entering into a contract⁵. These provisions⁶ have effect subject to any determination or order made in relation to a certified contract⁷ on an application for judicial review⁸ or on an audit review⁹.

Where, on an application for judicial review or on an audit review relating to a certified contract entered into by a local authority, a court:

- 365 (1) is of the opinion that the local authority did not have power to enter into the contract or exercised any power improperly in entering into it¹⁰; but
- 366 (2) having regard in particular to the likely consequences for the financial position of the local authority, and for the provision of services to the public, of a decision that the contract should not have effect, considers that the contract should have effect¹¹,

the court may determine that the contract has (and always has had) effect as if the local authority had had power to enter into it, and had exercised that power properly in entering into it¹².

1 As to the meaning of 'local authority' see PARA 23. As to contracts entered into by local authorities see PARA 411.

2 le the Local Government (Contracts) Act 1997 s 2(1): see PARA 412.

3 Local Government (Contracts) Act 1997 s 5(1)(a). For the purposes of ss 5-7 (see the text and notes 4-12; and PARA 415), references to an 'application for judicial review' include any appeal, or further appeal, against a determination or order made on such an application: s 5(4). As to the application of ss 1-9 see PARA 411 note 3. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

4 Local Government (Contracts) Act 1997 s 5(1)(b). For these purposes, 'audit review' means:

682 (1) an application or appeal under the Audit Commission Act 1998 s 17 (see PARA 772) or the Public Audit (Wales) 2004 s 32 (Local Government (Contracts) Act 1997 s 8(1)(a) (amended by the Audit Commission Act 1998 Sch 3 para 34(2); the Public Audit (Wales) Act 2004 Sch 2 para 20(a));

683 (2) consideration by an auditor of whether to give a certificate under the Audit Commission Act 1998 s 18 (repealed) or an appeal under s 18 (repealed) (Local Government (Contracts) Act

1997 s 8(1)(b) (amended by the Audit Commission Act 1998 Sch 2 para 20(b), Sch 3 para 34(3));

684 (3) consideration by an auditor of whether to issue a prohibition order under the Audit Commission Act 1998 s 20 (repealed) or an appeal under s 22 (repealed) (Local Government (Contracts) Act 1997 s 8(1)(c) (amended by the Audit Commission Act 1998 Sch 3 para 34(4)));

or any appeal, or further appeal, against a decision made on an application referred to in head (1) above or on an appeal referred to in any of heads (1)-(3) above: see the Local Government (Contracts) Act 1997 s 8(1).

A prohibition order issued under the Audit Commission Act 1998 s 20 (repealed) does not make it unlawful to: (a) make or implement any decision; (b) take or continue to take any course of action; or (c) enter any item of account, relating to a certified contract before the determination or withdrawal of any appeal against the order under s 22(3) (repealed) or, if no appeal is brought during the period within which it is permitted to bring any such appeal, before the end of that period: Local Government (Contracts) Act 1997 s 8(2) (amended by the Audit Commission Act 1998 Sch 3 para 34(5)).

5 Local Government (Contracts) Act 1997 s 5(1).

6 In the Local Government (Contracts) Act 1997 s 2(1): see PARA 412.

7 As to the meaning of 'certified contract' see PARA 412. As to certification requirements see PARA 413.

8 Local Government (Contracts) Act 1997 s 5(2)(a).

9 Local Government (Contracts) Act 1997 s 5(2)(b).

10 Local Government (Contracts) Act 1997 s 5(3)(a).

11 Local Government (Contracts) Act 1997 s 5(3)(b).

12 Local Government (Contracts) Act 1997 s 5(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(7) CONTRACTING OUT/(iv) Judicial and Audit Review/415. Relevant discharge terms.

415. Relevant discharge terms.

No determination or order made in relation to a certified contract¹ on an application for judicial review², or on an audit review³, affects the enforceability of any relevant discharge terms⁴ relating to the contract⁵. Where a local authority has agreed relevant discharge terms with any person with whom it has entered into a contract and the contract is a certified contract, the relevant discharge terms have effect, and are deemed always to have had effect, as if the local authority had had power to agree them and had exercised that power properly in agreeing them⁶.

Where the result of a determination or order made by a court on an application for judicial review or on an audit review is that a certified contract does not have effect⁷, and there are no relevant discharge terms having effect between the local authority and a person who is a party to the contract⁸, that person is entitled to be paid by the local authority such sums (if any) as he would have been entitled to be paid by the local authority if the contract⁹: (1) had had effect until the time when the determination or order was made¹⁰; but (2) had been terminated at that time by acceptance by him of a repudiatory breach by the local authority¹¹.

1 As to the meaning of 'certified contract' see PARA 412. As to certification requirements see PARA 413.

2 Local Government (Contracts) Act 1997 s 6(1)(a). As to the application of ss 1-9 see PARA 411 note 3. As to the meaning of 'application for judicial review' see PARA 414 note 3. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

3 Local Government (Contracts) Act 1997 s 6(1)(b). As to the meaning of 'audit review' see PARA 414 note 4.

4 For the purposes of the Local Government (Contracts) Act 1997 s 6 and s 7 (see the text and notes 5-11), 'relevant discharge terms', in relation to a contract entered into by a local authority, means terms: (1) which have been agreed by the local authority and any person with whom the local authority entered into the contract; (2) which either form part of the contract or constitute or form part of another agreement entered into by it not later than the day on which the contract was entered into; and (3) which provide for a consequence mentioned in s 6(3) (see heads (a)-(c)) to ensue in the event of the making of a determination or order in relation to the contract on an application for judicial review or on an audit review: s 6(2). Those consequences are: (a) the payment of compensatory damages (measured by reference to loss incurred or loss of profits or to any other circumstances) by one of the parties to the other; (b) the adjustment between the parties of rights and liabilities relating to any assets or goods provided or made available under the contract; or (c) both of those things: s 6(3). As to the meaning of 'local authority' see PARA 23. As to contracts entered into by local authorities see PARA 411. As to the meaning of 'assets' see PARA 411 note 2. As to the payment of damages generally see **DAMAGES**.

5 Local Government (Contracts) Act 1997 s 6(1).

6 Local Government (Contracts) Act 1997 s 6(4).

7 Local Government (Contracts) Act 1997 s 7(1)(a).

8 Local Government (Contracts) Act 1997 s 7(1)(b). For these purposes, the circumstances in which there are no relevant discharge terms having effect between the local authority and a person who is a party to the contract include (as well as circumstances in which no such terms have been agreed) circumstances in which the result of a determination or order of a court, made (despite s 6(4): see the text to note 6) on an application for judicial review or on an audit review, is that such terms do not have effect: s 7(3).

9 Local Government (Contracts) Act 1997 s 7(2).

10 Local Government (Contracts) Act 1997 s 7(2)(a).

11 Local Government (Contracts) Act 1997 s 7(2)(b). As to repudiatory breach of contract see **CONTRACT** vol 9(1) (Reissue) PARA 997 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(7) CONTRACTING OUT/(iv) Judicial and Audit Review/416. Contracting out of functions in connection with certified contracts.

416. Contracting out of functions in connection with certified contracts.

An authorisation by a local authority¹ of the exercise by another person of functions of the authority² for a period not exceeding ten years³ may specify that it is to be for a period exceeding ten years if it is given in connection with a certified contract⁴. However, an authorisation given in connection with a certified contract may not by virtue of these provisions specify that it is to be for a period exceeding the shorter of: (1) the period for which the contract is to operate⁵; and (2) a period of 40 years⁶.

1 For these purposes, an authorisation is given in connection with a certified contract if: (1) the authority by which it is given is a local authority for the purposes of the Local Government (Contracts) Act 1997; (2) the authority and the authorised person are parties to the contract; and (3) the authorisation is given to enable the authorised person to perform or better perform his obligations under the contract: s 9(3). As to the meaning of 'local authority' see PARA 23. As to the meaning of 'certified contract' see PARA 412. As to certification requirements see PARA 413. As to contracts entered into by local authorities see PARA 411.

2 As to the functions of local authorities see PARA 579 et seq.

3 Ie an authorisation given by virtue of an order under the Deregulation and Contracting Out Act 1994 s 70: see PARA 407.

4 Local Government (Contracts) Act 1997 s 9(1). As to the application of ss 1-9 see PARA 411 note 3.

5 Local Government (Contracts) Act 1997 s 9(2)(a).

6 Local Government (Contracts) Act 1997 s 9(2)(b).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(7) CONTRACTING OUT/(iv) Judicial and Audit Review/417. Provision of services by one Welsh principal council for another.

417. Provision of services by one Welsh principal council for another.

In Wales, any principal council¹ (the 'contracting council') may enter into an agreement with another such council (the 'supplying council') for the provision by the supplying council of services which the contracting council requires for the purpose of, or in connection with, the discharge of any of its functions². Any such agreement (a 'service agency agreement') may be made on such terms as to payment or otherwise as the parties consider appropriate³.

The power to make such agreements is exercisable subject to such regulations, if any, as the Welsh Ministers⁴ see fit to make for these purposes⁵. Any such regulations may, in particular, make provision: (1) excluding prescribed matters from those which may be the subject of a service agency agreement⁶; (2) restricting (whether by reference to one or more areas or otherwise) the councils with which a principal council may make a service agency agreement⁷; (3) restricting the area or areas with respect to which the supplying council may provide services under a service agency agreement⁸.

As respects the exercise of any of its other statutory powers, anything which falls to be done by the supplying council under a service agency agreement is to be treated as one of its statutory functions⁹.

1 As to areas and authorities in Wales see PARA 37 et seq.

2 Local Government (Wales) Act 1994 s 25(1). Section 25(1) is subject to: (1) the provisions made by or under the Local Government (Wales) Act 1994; (2) any other enactment which provides for specific functions of a local authority to be discharged only by that authority; (3) any other enactment which imposes requirements which must be satisfied before a local authority may enter into any agreement of the kind provided for by s 25(1) including, in particular, the provisions of the Local Government, Planning and Land Act 1980 Pt III (ss 5-23) (repealed) and the Local Government Act 1988 Pt I (ss 1-16) (repealed): Local Government (Wales) Act 1994 s 25(3).

The provisions of the Local Authorities (Goods and Services) Act 1970 (see PARA 495) do not affect, and are not affected by, the powers conferred on principal councils by the Local Government (Wales) Act 1994 s 25: s 25(7). As to the discharge of functions generally see PARA 369 et seq. As to joint arrangements between local authorities see PARAS 380, 386.

Every principal council in Wales had to prepare and publish a service delivery plan describing the manner in which it proposed to perform its functions during the period beginning on 1 April 1996 and ending with 31 March 1997, and giving particulars of the arrangements for organisation and management which it proposed to adopt: see s 26 (repealed).

3 Local Government (Wales) Act 1994 s 25(2).

4 As to the Welsh Ministers see PARA 97.

5 Local Government (Wales) Act 1994 s 25(4). As to the regulations that have been made under s 25 see the Local Government (Wales) (Service Agency Agreements) Regulations 1995, SI 1995/1040 (modified by SI 1995/2803).

6 Local Government (Wales) Act 1994 s 25(5)(a).

- 7 Local Government (Wales) Act 1994 s 25(5)(b).
- 8 Local Government (Wales) Act 1994 s 25(5)(c).
- 9 Local Government (Wales) Act 1994 s 25(6).

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CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(8) PROCUREMENT/418. Introduction

(8) PROCUREMENT

418. Introduction

For the purpose of implementing EU Directives concerning procurement¹ the Public Contract Regulations 2006² have been made. When these Regulations apply, a contracting authority³ must not treat a person who is not a national of a relevant state⁴ and established in a relevant state more favourably than one who is⁵. A contracting authority must⁶ (1) treat economic operators⁷ equally and in a non-discriminatory way⁸; and (2) act in a transparent way⁹.

The Regulations apply where work is awarded¹⁰ to an outside body, but do not apply where work is awarded to an in-house department or body of the contracting authority¹¹.

1 le EC Council Directive 2004/18 (OJ L134, 30.4.2004, p 114-240) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the 'Public Sector Directive') (amended by EC Commission Regulation 1874/2004 (OJ L326, 29.10.2004 p 17); EC Commission Directive 2005/51 (OJ L257, 1.10.2005, p 127); EC European Parliament and Council Directive 2005/75 (OJ L323, 9.12.2005, p 55); EC Commission Regulation 2083/2005 (OJ L333, 20.12.2005, p 28); EC Council Directive 2006/97 (OJ L363, 20.12.2006, p 107); EC Commission Regulation 1422/2007 (OJ L317, 5.12.2007, p 34); EC Commission Regulation 213/2008 (OJ L74, 15.3.2008, p 1)) and EC Council Directive 89/665 (OJ L395 30.12.89, p 33) on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (the 'Remedies Directive') (amended by EEC Council Directive 92/50 (OJ L209 24.7.1992, p 1) and European Parliament and of the Council Directive 2007/66 (OJ L335, 20.12.2007, p 31)).

2 le the Public Contracts Regulations 2006, SI 2006/5 (amended by SI 2007/2157; SI 2007/3542; SI 2008/2256; SI 2008/283).

3 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, each of the following is a contracting authority:

685 (1) a Minister of the Crown (reg 3(1)(a));

686 (2) a government department (reg 3(1)(b));

687 (3) the House of Commons (reg 3(1)(c));

688 (4) the House of Lords (reg 3(1)(d));

689 (5) the Northern Ireland Assembly Commission (reg 3(1)(e));

690 (6) the National Assembly for Wales (reg 3(1)(h));

691 (7) a local authority (reg 3(1)(i));

692 (8) a fire authority constituted by a combination scheme under the Fire Services Act 1947 (Public Contracts Regulations 2006, SI 2006/5, reg 3(1)(j));

- 693 (9) a fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004 s 1 or constituted by a scheme under s 2 or s 4 (Public Contracts Regulations 2006, SI 2006/5, reg 3(1)(k));
- 694 (10) a police authority established under the Police Act 1996 s 3 (Public Contracts Regulations 2006, SI 2006/5, reg 3(1)(m));
- 695 (11) the Metropolitan Police Authority established under the Police Act 1996 s 5B (Public Contracts Regulations 2006, SI 2006/5, reg 3(1)(n));
- 696 (12) an authority established under the Local Government Act 1985 s 10, a joint authority established by Pt IV or any body established in accordance with an order under s 67 (Public Contracts Regulations 2006, SI 2006/5, reg 3(1)(q)-(s));
- 697 (13) the Broads Authority (reg 3(1)(t));
- 698 (14) any joint board, the constituent members of which consist of any of the bodies specified in heads (7), (8), (10), (11) and (12) above (reg 3(1)(u));
- 699 (15) a national park authority established by an order under the Environment Act 1995 s 63 (reg 3(1)(v));
- 700 (16) a corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and financed wholly or mainly by another contracting authority, subject to management supervision by another contracting authority or more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another contracting authority (reg 3(1)(w));
- 701 (17) an association of or formed by one or more of the above (reg 3(1)(x)); and
- 702 (18) to the extent not specified in heads (1)-(17) above, an entity specified in Sch 1 (reg 3(1)(y)).

In the application of the Public Contracts Regulations 2006, SI 2006/5, to a local authority in England, 'local authority' in heads (1)-(18) above means:

- 703 (a) a county council, a district council, a London borough council, a parish council, the Council of the Isles of Scilly (reg 3(2)(a));
- 704 (b) the Common Council of the City of London in its capacity as local authority or police authority (reg 3(2)(b)); or
- 705 (c) the Greater London Authority or a functional body within the meaning of the Greater London Authority Act 1999 (Public Contracts Regulations 2006, SI 2006/5, reg 3(2)(c)).

In the application of the Public Contracts Regulations 2006, SI 2006/5, to a local authority in Wales, 'local authority' in heads (1)-(18) above means a county council, a county borough council or a community council: reg 3(3). Where an entity specified in heads (1)-(18) does not have the capacity to enter into a contract, the contracting authority in relation to that entity is a person whose function it is to enter into contracts for that entity: reg 3(6).

4 In the Public Contracts Regulations 2006, SI 2006/5, a relevant state is a member state or a state listed in Sch 4 column 1; the agreements with the European Union by which the provisions in relation to public procurement are extended to those states are specified in Sch 4 column 2 and the statutory provision designating them as European Treaties under the European Communities Act 1972 s 1(3) is specified in the Public Contracts Regulations 2006, SI 2006/5, Sch 4 column 3: reg 4(4).

5 Public Contracts Regulations 2006, SI 2006/5, reg 4(2). See also Case C-260/04 *Re Renewal of Horse-Race Betting Licences: EC Commission v Italy* [2007] 3 CMLR 1366, ECJ; Joined Cases C-147/06 and C-148/06 *SECAP SpA v Comune di Torino; Santorso Soc coop arl v Comune di Torino* [2008] 2 CMLR 1558, [2008] All ER (D) 196 (May), ECJ.

6 In accordance with the EC Council Directive 2004/18 (OJ L134, 30.4.2004, p 114-240) art 2: reg 4(3).

7 In the Public Contracts Regulations 2006, SI 2006/5, 'economic operator' means a contractor, a supplier or a services provider: reg 4(1).

8 Public Contracts Regulations 2006, SI 2006/5, reg 4(3)(a).

9 Public Contracts Regulations 2006, SI 2006/5, reg 4(3)(b).

10 In these regulations 'to award' means to accept an offer made in relation to a proposed contract: Public Contracts Regulations 2006, SI 2006/5, reg 2(1).

11 See *R v Portsmouth County Council ex p Coles* (1996) 95 LGR 494, CA.

UPDATE

418 Introduction

NOTE 1--Directive 2004/18 further amended: European Parliament and EC Council Directive 2009/81 (OJ L216, 20.8.2009, p 76).

NOTE 2--SI 2006/5 further amended: SI 2008/2848, SI 2009/1307.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(8) PROCUREMENT/419. Activities subject to Procurement Regulation.

419. Activities subject to Procurement Regulation.

Subject to the following exceptions the Public Procurement Regulations 2006¹ apply whenever a contracting authority² seeks offers in relation to a proposed public supply contract³, public works contract⁴, Part A services contract⁵, framework agreement⁶ or dynamic purchasing system⁷ other than a contract, framework agreement or dynamic purchasing system excluded⁸ from the application of these Regulations⁹.

However, the above does not apply whenever a contracting authority seeks offers in relation to a proposed framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded¹⁰.

1 In the Public Contracts Regulations 2006, SI 2006/5.

2 As to the meaning of 'contracting authority' see PARA 418 note 3.

3 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, 'public supply contract' means a contract, in writing, for consideration (whatever the nature of the consideration) (1) for the purchase of goods by a contracting authority (whether or not the consideration is given in installments and whether or not the purchase is conditional upon the occurrence of a particular event); or (2) for the hire of goods by a contracting authority (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not); and for any siting or installation of those goods, but where under such a contract services are also to be provided, the contract must only be a public supply contract where the value of the consideration attributable to the goods and any siting or installation of the goods is equal to or greater than the value attributable to the services: reg 2(1).

4 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, 'public works contract' means a contract, in writing, for consideration (whatever the nature of the consideration) (1) for the carrying out of a work or works for a contracting authority; or (2) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements: reg 2(1). A reference to a public works contract does not include a public works concession contract except in Pts 1, 9 and 10; and the following provisions in Pts 6-8: (a) reg 34 (subsidised public works contracts and public services contracts); (b) reg 36 (public works concession contracts); (c) reg 37 (sub-contracting the work or works to be carried out under a public works concession contract); (d) reg 39

(conditions for performance of contracts); (e) reg 41 (provision of reports); (f) reg 42 (publication of notices); (g) reg 43 (confidentiality of information); (h) reg 44 (means of communication); (i) reg 45 (sub-contracting); and (j) reg 46 (public service bodies): reg 5(3) (amended by SI 2007/3542).

5 Subject to the following a 'Part A services contract' is a contract under which services specified in the Public Contracts Regulations 2006, SI 2006/5, Sch 3 Part A are to be provided: reg 2(2)(a).

6 In the Public Contracts Regulations 2006, SI 2006/5, 'framework agreement' means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies: reg 2(1).

7 In the Public Contracts Regulations 2006, SI 2006/5, 'dynamic purchasing system' means a completely electronic system of limited duration which is established by a contracting authority to purchase commonly used goods, work, works or services; and open throughout its duration for the admission of economic operators which (1) satisfy the selection criteria specified by the contracting authority; and (2) submit an indicative tender to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person: reg 2(1).

8 Ie excluded by the Public Contracts Regulations 2006, SI 2006/5, reg 6 or reg 8.

9 Public Contracts Regulations 2006, SI 2006/5, reg 5(1) (amended by SI 2007/3542).

10 Public Contracts Regulations 2006, SI 2006/5, reg 5(1A) (added by SI 2007/3542). Whenever a contracting authority seeks offers in relation to a proposed Part B services contract or a framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded other than one excluded by virtue of the Public Contracts Regulations 2006, SI 2006/5, reg 6 or 8: (1) Pts 1, 9 and 10 apply; and (2) the following provisions in Pts 2-8 apply: (a) reg 9 (technical specifications in the contract documents); (b) reg 31 (contract award notice); (c) reg 40(2) (statistical and other reports); (d) reg 41 (provision of reports); and (e) reg 42 (publication of notices): reg 5(2) (amended by SI 2007/3542).

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420. Activities falling outside Procurement Regulations.

The Public Contracts Regulations 2006¹ do not apply, under particular circumstances², to the seeking of offers in relation to a proposed public contract³, framework agreement⁴ or dynamic purchasing system⁵.

1 Ie the Public Contracts Regulations 2006, SI 2006/5.

2 Ie:

706 (1) where the contracting authority is a utility and:

18. (a) the contract is for the purposes of carrying out an activity listed in the Public Contracts Regulations 2006, SI 2006/5, Sch 1 in which the utility is specified (reg 6(1)(a));

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19. (b) the contract is for the provision of bus services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the utility (reg 6(1)(b));

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20. (c) that contract is for the purpose of acquiring goods, work, works or services in order to sell, hire or provide them to another person unless the utility has a special or exclusive right to sell, hire or provide such goods, work, works or services or other persons are not free to sell, hire or provide them under the same conditions (reg 6(1)(c));

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21. (d) the contract is for the purchase of water, where that utility is engaged in the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of drinking water or the supply of drinking water to such networks (reg 6(1)(d));

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22. (e) the contract is for the supply of energy or of fuels for the production of energy, where that utility is engaged in the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat or the supply of gas or heat to such networks; the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks; or exploring for or extracting oil, gas, coal or other solid fuels (reg 6(1)(e));

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23. (f) where that utility is engaged in an activity excluded from the Utilities Contracts Regulations 2006, SI 2006/6 by virtue of reg 9 (see **FUEL AND ENERGY**) (Public Contracts Regulations 2006, SI 2006/5, reg 6(1)(f));

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- 707 (2) where the principal purpose of the contract is to permit the contracting authority to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services (reg 6(2)(a));
- 708 (3) which is classified as secret or where the performance of the contract must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the essential interests of the security of the United Kingdom require it (reg 6(2)(b));
- 709 (4) where the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) applies to that public contract, framework agreement or dynamic purchasing system (Public Contracts Regulations 2006, SI 2006/5, reg 6(2)(c));
- 710 (5) where different procedures govern the procedures leading to the award of the contract and it is to be entered into in accordance with an international agreement concluded in conformity with the EC Treaty to which the United Kingdom and a state which is not a relevant state are parties and it relates to goods or the carrying out of a work or works or the provision of services intended for the joint implementation or exploitation of a project related to that agreement; an international agreement relating to the stationing of troops and concerning the undertakings of a relevant state or a state which is not a relevant state; or the contract award procedures of an organisation of which only states are members (an 'international organisation') or of which only states or international organisations are members (reg 6(2)(d));
- 711 (6) for the acquisition of land, including existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land (reg 6(2)(e));
- 712 (7) for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters or for the purchase of broadcasting time (reg 6(2)(f));
- 713 (8) for arbitration or conciliation services (reg 6(2)(g));
- 714 (9) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments in particular transactions by the contracting authorities to raise money or capital (reg 6(2)(h));
- 715 (10) for central bank services (reg 6(2)(i));
- 716 (11) for employment and other contracts of service (reg 6(2)(j));
- 717 (12) for research and development services unless the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs; and the services are to be wholly paid for by the contracting authority (reg 6(2)(k));

718 (13) under which services are to be provided by a contracting authority, or by a person which is a contracting authority in another relevant state for the purposes of EC Council Directive 2004/18 (OJ L134, 30.4.2004, p 114-240) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the 'Public Sector Directive'), because that contracting authority or person has an exclusive right to provide the services, or which is necessary for the provision of the services; in accordance with any published law, regulation or administrative provision, which is compatible with the EC Treaty (Public Contracts Regulations 2006, SI 2006/5, reg 6(2)(l)); or

719 (14) which is a services concession contract awarded by a contracting authority, subject to the application of reg 46 (reg 6(2)(m)).

As to the meaning of 'contracting authority' see PARA 418 note 3. A 'utility' is a relevant person specified in the Utilities Contracts Regulations 2006, SI 2006/6, Sch 1 (see **FUEL AND ENERGY**): see reg 3(1); Public Contracts Regulations 2006, SI 2006/5, reg 6(1).

3 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, 'public contract' means a public services contract, a public supply contract or a public works contract: reg 2 (1). As to the meaning of 'public supply contract' see PARA 419 note 3 and as to the meaning of 'public works contract' see PARA 419 note 4. In these regulations 'public services contract' means a contract, in writing, for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services but does not include: (1) a public works contract; or (2) a public supply contract; but a contract for both goods and services must be considered to be a public services contract if the value of the consideration attributable to those services exceeds that of the goods covered by the contract and a contract for services which includes activities specified in Sch 2 that are only incidental to the principal object of the contract must be considered to be a public services contract: reg 2(1).

4 As to the meaning of 'framework agreement' see PARA 419 note 6.

5 As to the meaning of 'dynamic purchasing system' see PARA 419 note 7.

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421. Reserved contracts.

A contracting authority¹ may reserve the right to participate in a public contract² award procedure, framework agreement³ or dynamic purchasing system⁴ to economic operators⁵ which operate supported factories⁶, supported businesses⁷ or supported employment programmes⁸.

Where a contracting authority has reserved the right to participate in a public contract, framework agreement or dynamic purchasing system in accordance with the above provisions⁹, it must follow the contract award procedures set out in the Public Contracts Regulations 2006¹⁰.

When seeking offers in relation to a public contract, a framework agreement or dynamic purchasing system, a contracting authority must specify in the contract notice¹¹ if it is using the approach referred to in the above provisions¹².

1 As to the meaning of 'contracting authority' see PARA 418 note 3.

2 As to the meaning of 'public contract' see PARA 420 note 3.

3 As to the meaning of 'framework agreement' see PARA 419 note 6.

4 As to the meaning of 'dynamic purchasing system' see PARA 419 note 7.

5 As to the meaning of 'economic operator' see PARA 418 note 7.

6 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 7 'supported factory' means an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported factories' is interpreted accordingly: Public Contracts Regulations 2006, SI 2006/5, reg 7(1).

7 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 7 'supported business' means a service where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported businesses' is interpreted accordingly: reg 7(1).

8 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 7 'supported employment programme' means a scheme under which work is provided for disabled persons and where more than 50% of the workers so supported are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and 'supported employment programmes' is interpreted accordingly: reg 7(1).

9 In accordance with the Public Contracts Regulations 2006, SI 2006/5, reg 7(2).

10 Public Contracts Regulations 2006, SI 2006/5, reg 7(3).

11 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, 'contract notice' means, except in reg 49, a notice sent to the Official Journal in accordance with the Public Contracts Regulations 2006, SI 2006/5: reg 2(1).

12 Public Contracts Regulations 2006, SI 2006/5, reg 7(4).

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CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(8) PROCUREMENT/422. Thresholds.

422. Thresholds.

The Public Contracts Regulations 2006¹ do not apply to the seeking of offers in relation to a proposed public contract², framework agreement³ or dynamic purchasing system⁴ where the estimated value⁵ of the contract, framework agreement or dynamic purchasing system (net of value added tax) at the relevant time⁶ is less than the relevant threshold⁷.

A contracting authority must not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of the Public Contracts Regulations 2006 to those contracts⁸.

1 In the Public Contracts Regulations 2006, SI 2006/5.

2 As to the meaning of 'public contract' see PARA 420 note 3.

3 As to the meaning of 'framework agreement' see PARA 419 note 6.

4 As to the meaning of 'dynamic purchasing system' see PARA 419 note 7.

5 For the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 8(1) the estimated value of a public contract is the value of the total consideration payable, net of value added tax (calculated in accordance with this regulation), which the contracting authority expects to be payable under the contract: reg 8(7).

In determining the value of the total consideration which the contracting authority expects to be payable under a public contract it must, where appropriate, take account of any form of option; any renewal of the contract; any prize or payment awarded by the contracting authority to the economic operator; the premium payable and other forms of remuneration for insurance services; fees, commission, interest or other forms of remuneration payable for banking and other financial services; and fees, commission or other forms of remuneration payable for design services: reg 8(8).

For the purposes of reg 8(1) the estimated value of a public supply contract for the hire of goods is the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 12 months or less; the value of the consideration which the contracting authority expects to

be payable under the contract if the term of the contract is fixed for more than 12 months; or the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into: reg 8(9).

For the purposes of reg 8(1) the estimated value of a public services contract which does not indicate a total price is the aggregate of the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or the value of the consideration which the contracting authority expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period: reg 8(10).

Subject to reg 8(12) and reg 8(15), where a contracting authority has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfill that requirement, the estimated value for the purposes of reg 8(1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts. However this does not apply to any contract (unless the contracting authority chooses to apply that paragraph to a contract) if the contract has an estimated value of less than 80,000 euro for a public services contract or a public supply contract; or 1,000,000 euro for a public works contract; and the aggregate value of that contract and any other such contract is less than 20% of the aggregate value of the consideration which the contracting authority has given or expects to be payable under all the contracts entered into or to be entered into to fulfill the single requirement for goods, services or for the carrying out of work or works: reg 8(12). The value in pounds sterling of any amount expressed in the Public Contracts Regulations 2006, SI 2006/5, in euro is calculated by reference to the rate for the time being applying for the purposes of EC Council Directive 2004/18 (OJ L134, 30.4.2004, p 114-240) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (the 'Public Sector Directive') as published from time to time in the Official Journal: Public Contracts Regulations 2006, SI 2006/5, reg 8(6).

Subject to reg 8(15), where a contracting authority has a requirement over a period for goods or services and for that purpose enters into a series of contracts, or a contract which under its terms is renewable, the estimated value for the purposes of reg 8(1) of the contract is the amount calculated under reg 8(14): reg 8(13).

The contracting authority must calculate the amount referred to in reg 8(13) either by taking the aggregate of the value of the consideration payable under the contracts which have similar characteristics, and are for the same type of goods or services, during the last financial year of the contracting authority ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods to be purchased or hired or services to be provided in the period of 12 months commencing with the relevant time; or by estimating the aggregate of the value of the consideration which the contracting authority expects to be payable under contracts which have similar characteristics, and which are for the same type of goods or services during in the case of public supply contracts, the period of 12 months from the first date of the delivery of the goods to be purchased or hired, or in the case of public services contracts, from the first date on which the services will be performed, or the financial year if that is longer than 12 months: reg 8(14).

Notwithstanding reg 8(11) and reg 8(13), in relation to a public supply contract or a public services contract, when the goods or services are required for the sole purposes of a discrete operational unit within the organisation of a contracting authority and the decision whether to procure those goods or services has been devolved to such a unit, and that decision is taken independently of any other part of the contracting authority, the valuation methods described in reg 8(11) and reg 8(14) must be adapted by aggregating only the value of the consideration which was payable or the contracting authority expects to be payable, as the case may be, under a public supply contract or a public services contract which was or is required for the sole purpose of that unit: reg 8(15).

Where a contracting authority intends to provide any goods to the economic operator awarded a public works contract for the purpose of carrying out that contract, the value of the consideration of the public works contract for the purposes of reg 8(7) and 8(11) must be taken to include the estimated value at the relevant time of those goods: reg 8(16).

The estimated value of a framework agreement or dynamic purchasing system is the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement or dynamic purchasing system: reg 8(18).

6 The relevant time for the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 8(1), (14), (16) means the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with those regulations: reg 8(20).

7 Public Contracts Regulations 2006, SI 2006/5, reg 8(1). For the purposes of reg 8(1) the relevant threshold is:

720 (1) the sum mentioned in EC Council Directive 2004/18 (OJ L134, 30.4.2004, p 114-240) on the coordination of procedures for the award of public works contracts, public supply contracts and

public service contracts (the 'Public Sector Directive') art 7(c) (as amended from time to time) in the case of a public works contract and a public works contract subsidised as referred to in the Public Contracts Regulation 2006, SI 2006/5, reg 34 (see reg 8(2), (5A) (reg 8(2) amended and reg 8(5A) added by SI 2007/3542));

- 721 (2) the sum mentioned in EC Council Directive 2004/18, art 7(b) (as amended from time to time) in the case of a public services contract which is: (a) subsidised as referred to in the Public Contracts Regulation 2006, SI 2006/5, reg 34; (b) for specified telecommunications services; (c) for specified research and development services; (d) a Part B services contract to which reg 34 does not apply (see reg 8(4), (5A) (reg 8(5A) as so added; reg 8(4) amended by SI 2007/3542));
- 722 (3) subject to head (2) above, in the case of a Part A services contract, the sum mentioned in EC Council Directive 2004/18, art 7(a) (as amended from time to time) where offers are sought by an entity as specified in the Public Contracts Regulations 2006, SI 2006/5, Sch 1 and the sum mentioned in EC Council Directive 2004/18, art 7(b) where offers are sought by any other contracting authority (see the Public Contracts Regulations 2006, SI 2006/5, reg 8(3), (5A) (reg 8(5A) as so added and reg 8(3) as amended by SI 2007/3542));
- 723 (4) in the case of a supply contract, is the sum mentioned in EC Council Directive 2004/18, art 7(a) (as amended from time to time) where offers are sought by entities specified in the Public Contracts Regulations 2006, SI 2006/5, Sch 1 and, in certain circumstance the Secretary of State, and the sum mentioned in EC Council Directive 2004/18, art 7(b) in relation to all other contracts (see the Public Contracts Regulations 2006, SI 2006/5, reg 8(5), (5A) (reg 8(5A) as so added; and reg 8(5) as amended by SI 2007/3542));
- 724 (5) for a framework directive or a dynamic purchasing system is the threshold for:
24. (a) a public works contract, where the framework agreement or dynamic purchasing system relates to the carrying out of work or works (Public Contracts Regulations 2006/5, reg 8(17)(a));
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25. (b) a public services contract, where the framework agreement or dynamic purchasing system relates to the provision of services (reg 8(17)(b)); or
- 26
26. (c) a public supply contract, where the framework agreement or dynamic purchasing system relates to the purchase or hire of goods (reg 8(17)(c)).
- 27

As to the meanings of 'Part A services contract' and 'Part B services contract' see PARA 419.

8 Public Contracts Regulations 2006, SI 2006/5, reg 8(19).

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423. Enforcement of obligations.

The obligation on a contracting authority¹ to comply with the provisions of the Public Contracts Regulations 2006², and with any enforceable Community obligation in respect of a public contract³ or framework agreement⁴ is a duty⁵ owed to an economic operator⁶.

1 As to the meaning of 'contracting authority' see PARA 418 note 3.

2 This does not apply to the Public Contracts Regulations 2006, SI 2006/5, regs 14(2), 30(9), 32(14), 40, 41(1). The obligation on a design contest (other than one excluded by reg 6, 8 or 33) and the obligation on a concessionaire to comply with the provisions of reg 37(3) are also duties owed to an economic operator.

3 I.e. the Public Contracts Regulations 2006, SI 2006/5.

- 4 As to the meaning of 'public contract' see PARA 420 note 3.
- 5 As to the meaning of 'framework agreement' see PARA 419 note 6.
- 6 See the Public Contracts Regulations 2006, SI 2006/5, reg 47(1).

UPDATE

423 Enforcement of obligations

NOTE 6--As to the continuation of an interim injunction in proceedings for breach of a contracting authority's duty under SI 2006/5 reg 47 see *European Dynamics SA v HM Treasury* [2009] EWHC 3419 (TCC), (2009) 128 ConLR 36.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/3. CONSTITUTIONAL AND OPERATIONAL ARRANGEMENTS/(9) PRIVATE FINANCE INITIATIVES/424. Private Finance Initiative.

(9) PRIVATE FINANCE INITIATIVES

424. Private Finance Initiative.

The Private Finance Initiative (PFI) allows a local authority to purchase from the private sector, within the framework of a single contract, both services and any asset required for the provision of the service, spread over the period of the contract¹, commonly 25 to 30 years².

Central Government funding in the form of PFI credits is available towards the capital costs of projects³. While PFI projects are not now specifically provided for in the capital finance regime⁴, those entered into before 1 April 2004 are required to continue to comply with the regime then in force⁵.

1 See the Local Government PFI Project Support Guide (2008-09), p 1, Communities and Local Government.

2 See eg the Private Finance Initiative: A Guide for Fire and Rescue Authorities, Introduction, Communities and Local Government, 2009.

3 See the Local Government PFI Project Support Guide (2008-09), p 1, Communities and Local Government; Project Review Group (PRG) - Process and Code of Practice, para 2.1, HM Treasury, 2009, version 3.

4 Ie under the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, SI 2003/3146, and the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003, SI 2003/3229. See further **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

5 Ie under the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319; and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(i) Duty to Appoint Officers/425. Duty to appoint officers.

4. OFFICERS

(1) APPOINTMENT OF OFFICERS

(i) Duty to Appoint Officers

425. Duty to appoint officers.

A local authority¹ must² appoint such officers³ as it thinks necessary for the proper discharge by it of such of its own⁴ or another authority's functions as fall to be discharged by it, and for the carrying out of any obligations incurred by it in connection with an agreement⁵ made by it to place staff at the disposal of another local authority⁶. Officers so appointed hold office on such reasonable terms and conditions, including conditions as to remuneration, as the appointing authority thinks fit⁷.

The general power to appoint officers replaced, subject to some savings⁸, a number of specific provisions in earlier legislation requiring or empowering local authorities, or committees of local authorities, to appoint specified officers, and those provisions, except some which were saved, ceased to have effect from 1 April 1974⁹. However, this abolition of duties or powers to appoint specified officers does not extend to any committee of which some members are required¹⁰ to be appointed by a body or person other than a local authority¹¹, nor does it extend to certain other persons¹².

In addition to the general power to appoint officers¹³ there are specific requirements to appoint officers for the purposes of financial administration¹⁴ and for the registration of electors¹⁵, and in the case of local authority social services functions the responsible local authorities are required by statute to secure the provision of adequate staff to assist the director of social services in the exercise of his functions¹⁶.

Every appointment¹⁷ of a person to a paid office or employment under a local authority or parish or community council¹⁸ in England and Wales must be made on merit¹⁹.

1 As to the meaning of 'local authority' see PARA 23. See also the Local Government Act 1972 s 146A(1), (2); and PARA 462 note 3.

2 Note that a local authority is not compelled to employ officers; it may discharge its functions by contracting out the relevant function to a third party: see PARA 407 et seq.

3 There is no definition of 'officer' or 'officers' in the Local Government Act 1972. The sidenote to s 112 is 'Appointment of staff' but the term used throughout s 112 is 'officer'. The sidenote to s 255 is 'Transfer of officers', but s 255, and in particular s 255(2), makes provision for all employees of the former authorities. The Local Government (Staff Transfer Schemes) Order 1973, SI 1973/1847, art 2(2), defines 'officer' in relation to any council, for the purposes of that order, as the holder of any office or employment under that council. A similar definition is contained in the Local Authorities etc (Staff Transfer and Protection) Order 1974, SI 1974/483, art 3(2). There can be no doubt that the terms 'staff' and 'officer' in the Local Government Act 1972 s 112, and elsewhere are intended to embrace all employees of local authorities. See also *Legg v Stoke Newington Vestry* (1895) 59 JP 696, where a hall porter, a messenger and an office boy were held to be officers within the meaning of a local Act. Certain functions of a local authority which are conferred by or under any enactment and which may be exercised by an officer of the authority may, if a minister by order so provides, be exercised by, or by the employees of, such person, if any, as may be authorised in that behalf by the local authority, provided that the minister has consulted appropriate representatives of local government: see the Deregulation and Contracting Out Act 1994 s 70(1)-(3); and PARA 407.

4 As to discharge of functions see PARA 369 et seq. As to the functions of local authorities generally see PARA 460 et seq. A local authority may do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions: Local Government Act 1972 s 111(1).

5 Ie an agreement under the Local Government Act 1972 s 113: see PARA 380.

6 Local Government Act 1972 s 112(1), which is expressed to be without prejudice to s 111 and to be subject to the provisions of the Local Government Act 1972. As to the confidentiality of staff records see **CONFIDENCE AND DATA PROTECTION**.

7 Local Government Act 1972 s 112(2). However, what appears from the wording of the Act to be a wide measure of discretion, only limited by the test of what may be thought reasonable, is, in fact, the subject of substantial constraints by reason of the combined effects of (1) employment legislation; and (2) nationally or provincially established agreements or awards as to pay and conditions of employment. These agreements or awards result from the many joint negotiating committees and councils established, either pursuant to statute or otherwise, for the local government service: see PARA 437 et seq.

The following cases concerning the discretion to pay reasonable remuneration were decided before the full development of nationally agreed levels of pay (backed by statutory machinery for enforcement), but they still represent fundamental rules which will be relevant (a) in relation to matters not covered by national agreements; and (b) in relation to the choice of alternatives, where authorised, in these agreements: *Roberts v Hopwood* [1925] AC 578, HL (a discretion as to what is reasonable rests with the council, but the amount of the payment may be so excessive as to be unlawful); *Re Walker's Decision* [1944] 1 KB 644, [1944] 1 All ER 614, CA (higher wages paid to employees who had children; the court must have regard to the amount of the wages and not to the motive which led to that amount being paid, and, the amount not being unreasonable, the court would not interfere with the exercise of the council's wide statutory discretion); *Roberts v Cunningham* (1925) 90 JP 32, HL (the fixing of an arbitrary wage without regard to the cost of living and work to be done is not a proper exercise of the council's discretion); *R v Roberts, ex p Woolwich Borough Council* (1927) 25 LGR 347, sub nom *Woolwich Corp v Roberts* 96 LJB 757, HL (the continued payment of a minimum wage which was reasonable when originally fixed was not a proper exercise of discretion); *Ex p Mellish* (1863) 8 LT 47 (gratuities may not be paid out of rates, ie in addition to usual salary); *Re Audit (Local Authorities) Act 1927, Re Magrath* [1934] 2 KB 415, CA (remuneration may not be increased retrospectively, but different considerations might apply where extra services are performed on an understanding as to extra remuneration).

The following cases were decided after the development of nationally agreed levels of pay: *Newbold v Leicester City Council* [2000] LGR 58, [1999] ICR 1182, CA; *Pickwell v Camden London Borough Council* [1983] QB 962, [1983] 1 All ER 602, DC (a pay settlement will not be ultra vires merely because it exceeds the nationally agreed figure); *Allsop v North Tyneside Metropolitan Borough Council* [1992] RVR 104, 90 LGR 462, CA (a specific power to provide particular employment benefits may be taken to prevent the local authority providing additional benefits of the same or similar kind).

8 The Local Government Act 1972 s 112(3) does not apply to: (1) chief education officers appointed under the Education Act 1996 s 532 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 51); (2) agricultural analysts and deputy agricultural analysts appointed under the Agriculture Act 1970 s 67(3) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 958); and (3) directors of social services appointed under the Local Authority Social Services Act 1970 s 6 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1007): Local Government Act 1972 s 112(4) (amended by the Local Government Act 1985 s 102, Sch 17; the Weights and Measures Act 1985 s 98, Sch 13 Pt I; the Education Act 1996 s 582(1), Sch 37 para 23 and the Fire and Rescue Services Act 2004 Sch 1 para 40, Sch 2).

Further, nothing in the Local Government Act 1972 s 112 affects the operation of the London Government Act 1963 s 5 (delegation of functions: see **LONDON GOVERNMENT**), or of the Local Authorities (Goods and Services) Act 1970: Local Government Act 1972 s 112(6).

9 See the Local Government Act 1972 s 112(3). The abolition of appointments of specified officers relates to those for which provision is made by any enactment or instrument made under an enactment: s 112(3). This does not prevent or restrict a local authority, by its general power under s 112(1) (see the text and notes 1-6), from appointing specified officers for particular duties, and there are certain provisions by which for certain duties proper officers must be appointed: see PARA 431.

10 It would appear that the requirement must be by enactment or order establishing the constitution of the committee.

11 Local Government Act 1972 s 112(3).

12 Local Government Act 1972 s 112(4) (amended by the Statute Law (Repeals) Act 1989). See also note 8.

13 Ie in the Local Government Act 1972 s 112(1): see the text and notes 1-6.

14 Ie under the Local Government Act 1972 s 151: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624.

15 Ie under the Representation of the People Act 1983 s 8(2): see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 154.

16 See the Local Authority Social Service Act 1970 s 6(6); and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1007.

17 As to the appointment of assistants for political groups to which the Local Government and Housing Act 1989 s 7(1) (see the text and note 19) does not apply see s 9; and PARA 432 et seq. As to the appointment of an authority's head of paid service and monitoring officer see ss 4, 5, 5A; and PARAS 427, 429.

18 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

19 Local Government and Housing Act 1989 s 7(1). The provisions of s 7(1) apply to all appointments made by, or by any committee of, a local authority or parish or community council, whether made under the Local Government Act 1972 s 112 or otherwise, but have effect subject to: (1) the Sex Discrimination Act 1975 s 7 (discrimination permitted in relation to employment where sex of employee is a genuine occupational qualification) (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 363); (2) the Race Relations Act 1976 s 5 (discrimination permitted in relation to employment where being of a particular racial group is a genuine occupational qualification) (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 447); (3) the Local Government Finance Act 1988 s 113 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 625) and the Local Government and Housing Act 1989 s 6 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARAS 624-625) (qualifications of officers responsible for administration of financial affairs of certain authorities); and (4) the Disability Discrimination Act 1995 ss 4, 4A, 4D, 4E (discrimination and duties to make adjustments in relation to employees and office-holders) (see **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 532, 534, 543-544); Local Government and Housing Act 1989 s 7(2) (amended by the Disability Discrimination Act 1995 s 70(4), (5), Sch 6 para 5, Sch 7; and SI 2003/1673).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(ii) Principal Officers/426. Appointment of chief officers.

(ii) Principal Officers

426. Appointment of chief officers.

Where the relevant authority¹ proposes to appoint a chief officer², and it is not proposed that the appointment be made exclusively from among its existing officers, it must³:

- 367 (1) draw up a statement specifying the duties of the officer concerned, and any qualifications or qualities to be sought in the person to be appointed⁴;
- 368 (2) make arrangements for the post to be advertised⁵ in such a way as is likely to bring it to the attention of persons who are qualified to apply for it⁶; and
- 369 (3) make arrangements for a copy of the statement mentioned in head (1) above to be sent to any person on request⁷.

Where a post has been advertised as provided in head (2) above, the authority must interview all qualified applicants for the post, or select a short list of such qualified applicants and interview those included on the short list⁸. Where no qualified person has applied, or, in relation to Wales only, the authority decides to re-advertise the appointment, the authority must make further arrangements for advertisement in accordance with head (2) above⁹.

Any chief officer may be appointed by a committee or sub-committee of the authority, or a relevant joint committee¹⁰.

In the case of an authority which is operating either a mayor and cabinet executive¹¹ or leader and cabinet executive¹² the following additional requirements apply:

- 370 (a) in England and Wales, where a committee or a sub-committee is discharging the function of the appointment, discipline or dismissal of the officer designated as the head of the authority's paid service¹³, or a statutory or non-statutory chief

- officer or deputy chief officer¹⁴, at least one member of the executive must be a member of that committee or sub-committee¹⁵;
- 371 (b) in England only, before an offer of an appointment of an officer referred to in head (a) above may be made: (i) the appointor¹⁶ must notify the proper officer¹⁷ of the name of the person to be appointed and any other particulars considered relevant to the appointment¹⁸; (ii) the proper officer must notify every member of the executive of the authority of these matters and the period within which any objection to the making of the offer is to be made by the elected mayor or executive leader may object¹⁹; and (iii) either (A) the elected mayor²⁰, or the executive leader²¹, must, within the period specified in the notice, notify the appointor that neither he nor any other member of the executive has any objection to the making of the offer²²; or (B) the proper officer must notify the appointor that no objection was received by him in the relevant period²³; or (C) that the appointor is satisfied that any objection received from the elected mayor or the executive leader within that period is not material or is not well-founded²⁴.

1 'Relevant authority' for these purposes means, in relation to England a county or district council, the council of a London borough, the Common Council and the Council of the Isles of Scilly (Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2)); and in relation to Wales means a county council or county borough council (Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 2). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36.

2 'Chief officer', in relation to a relevant authority, means: (1) the head of its paid service, designated under the Local Government and Housing Act 1989 s 4(1) (see PARA 427); (2) its monitoring officer (see PARA 429); (3) a statutory chief officer mentioned in s 2(6)(a), (c) or (d) (see PARA 122); or (4) a non-statutory chief officer (within the meaning of s 2(7) (see PARA 122)); and any reference to an appointment or purported appointment of a chief officer includes a reference to the engagement or purported engagement of such an officer under a contract of employment: Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 2. 'Monitoring officer' means the officer designated under the Local Government and Housing Act 1989 s 5(1) (see PARA 429): Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 2.

3 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 1; Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 3, Sch 1 Pt I standing order 1. The steps taken under this standing order, or standing order 2 (see the text and notes 8-9) may be taken by a committee, sub-committee or chief officer of the authority: Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt II para 1(a); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt II para 1(a). This also applies where the duties of a chief officer include the discharge of functions of two or more local authorities in pursuance of the Local Government Act 1972 s 101(5) (see PARA 380): Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt II para 2(a); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275 Sch 1 Pt II para 2(b). As to committees and sub-committees see PARA 371 et seq.

4 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 1(a); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 3, Sch 1 Pt I standing order 1(a).

5 As to advertising see eg *R v Derbyshire County Council, ex p The Times Supplements Ltd* (1990) Times, 19 July, DC.

6 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 1(b); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt I standing order 1(b).

7 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 1(c); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt I standing order 1(c).

8 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 2(1); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275 Sch 1 Pt I standing order 2(1).

9 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt I standing order 2(2); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt I standing order 2(2).

10 Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt II para 1(b); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt II para 1(b). This also applies where the duties of a chief officer include the discharge of functions of two or more local authorities in pursuance of the Local Government Act 1972 s 101(5) (see PARA 370); Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 1 Pt II para 2(a); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 1 Pt II para 2(b).

11 As to mayor and cabinet executives see PARA 328 et seq.

12 As to leader and cabinet executives see PARA 330 et seq.

13 As to the head of the authority's paid service see PARA 427.

14 le a statutory chief officer within the meaning of the Local Government and Housing Act 1989 s 2(6) (see PARA 122); a non-statutory chief officer within the meaning of s 2(7) (see PARA 122); and a deputy chief officer within the meaning of s 2(8) (see PARA 122): see the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, Sch 1 Pt 1 para 3, Pt 2 para 3; Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 3 Pt 1 para 3, Pt 2 para 3.

15 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, Sch 1 Pt I para 4(2), Pt 2 para 4(2); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 3 Pt I para 4(2)(a), Pt 2 para 4(2)(a). In addition, in relation to an authority in Wales not more than half the members of that committee or sub-committee are to be members of the executive of the relevant authority: Sch 3 Pt I para 4(2)(b), Pt 2 para 4(2)(b).

16 le the authority, committee, sub-committee or officer making the appointment: see the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3 Sch 1 Pt I para 5(1), Pt II para 5(1).

17 For these purposes 'proper officer' means an officer appointed by the authority for the purpose of the relevant provisions: Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, Sch 1 Pt I para 1, Pt 2 para 1. As to proper officers see further PARA 431.

18 See the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt I para 5(2)(a), Pt II para 5(2)(a).

19 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt I para 5(2)(b), Pt II para 5(2)(b).

20 As to elected mayors see PARA 322.

21 As to executive leaders see PARA 327.

22 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt I para 5(2)(c)(ii), Pt II para 5(2)(c)(ii).

23 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt I para 5(2)(c)(ii), Pt II para 5(2)(c)(ii).

24 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt I para 5(2)(c)(iii), Pt II para 5(2)(c)(iii).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(ii) Principal Officers/427. Head of paid service.

427. Head of paid service.

Every relevant authority¹ must designate one of its officers² as the head of its paid service (generally known as the 'chief executive officer'³) and provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties to be performed⁴. It is the duty of the head of a relevant authority's paid service, where he considers it appropriate to do so, to prepare a report to the authority setting out his proposals in respect of the following⁵:

- 372 (1) the manner in which the discharge by the authority of its different functions is co-ordinated⁶;
- 373 (2) the number and grades of staff required by the authority for the discharge of its functions⁷;
- 374 (3) the organisation of the authority's staff⁸; and
- 375 (4) the appointment and proper management of the authority's staff⁹.

As soon as practicable after he has prepared such a report, the head of a relevant authority's paid service must arrange for a copy to be sent to each member of the authority¹⁰. The authority must then consider the report at a meeting held not more than three months after copies of the report are first sent to the authority's members¹¹.

Where an authority has either a mayor and cabinet executive¹², a leader and cabinet executive¹³, or alternative arrangements¹⁴, and a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of the head of its paid service, the authority must approve that appointment before an offer of appointment is made to him or, as the case may be, must approve that dismissal before notice of dismissal is given to him¹⁵.

1 For these purposes, 'relevant authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, police authority or port health authority, and the Council of the Isles of Scilly: Local Government and Housing Act 1989 ss 4(6)(a), 21(1)(a)-(e). As to areas and authorities in England see PARA 23 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36.

2 References to an officer of a local authority or to a paid office under a local authority do not include references to, or to the office of, the chairman or vice-chairman of the authority (whether referred to as such as mayor, Lord Mayor, deputy mayor, Lord Provost, or otherwise) or a member of any executive of the authority (other than a council manager): Local Government and Housing Act 1989 s 21(4) (amended by SI 2001/2237; and SI 2002/808). As to the meaning of 'local authority' see PARA 23. As to chairmen and vice chairmen see PARA 144 et seq; and as to council managers see PARA 327.

3 As to the pay and conditions of service of chief executive officers see PARA 437.

4 See the Local Government and Housing Act 1989 s 4(1). Such a post is politically restricted: see PARA 122.

5 Local Government and Housing Act 1989 s 4(2).

6 Local Government and Housing Act 1989 s 4(3)(a).

7 Local Government and Housing Act 1989 s 4(3)(b).

8 Local Government and Housing Act 1989 s 4(3)(c).

9 Local Government and Housing Act 1989 s 4(3)(d). As to the appointment and management of staff see PARA 425 et seq.

10 Local Government and Housing Act 1989 s 4(4).

11 Local Government and Housing Act 1989 s 4(5). Nothing in the Local Government Act 1972 s 101 (see PARA 370) (arrangements for the discharge of functions by local authorities) applies to the duty so imposed: Local Government and Housing Act 1989 s 4(5).

12 As to mayor and cabinet executives see PARA 328 et seq.

13 As to leader and cabinet executives see PARA 330 et seq.

14 As to alternative arrangements see PARA 364 et seq.

15 Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 3, Sch 1 Pt 1 para 4(1), Pt II para 4(1), Pt IV para 4; Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275,

Sch 3 Pt I para 4(1), Pt 2 para 4(1), Pt 4 para 4. This power must be exercised by the authority itself and accordingly the Local Government Act 1972 s 101 does not apply to the exercise of the power: Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384, reg 5; Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 7.

UPDATE

427 Head of paid service

NOTE 1--Reference to Local Government and Housing Act 1989 21(1)(a)-(e) now to s 21(1)((a)-(e), (ja), (jb): s 4(6)(a) (amended by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(ii) Principal Officers/428. Chief finance officer.

428. Chief finance officer.

Every local authority¹ must make arrangements for the proper administration of its financial affairs and must secure that one of its officers, referred to as the chief finance officer, has responsibility for the administration of those affairs².

¹ As to the meaning of local authority see PARA 23.

² As to the qualifications and duties of the chief finance officer see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 626.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(ii) Principal Officers/429. Monitoring officer.

429. Monitoring officer.

Every relevant authority¹ must designate one of its officers² (known as the 'monitoring officer') and provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties to be performed³. Subject to certain exceptions⁴, the monitoring officer may be the head of the authority's paid service or, in the case of a police authority⁵, the chief executive of the authority, but may not be its chief finance officer⁶.

It is the duty of a relevant authority's monitoring officer to prepare a report to the authority if at any time it appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority is represented constitutes, has given rise to, or is likely to, or would give rise to⁷: (1) a contravention⁸ by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law⁹; (2) maladministration or injustice¹⁰; or (3) a matter which the Public Services Ombudsman for Wales would be entitled to investigate¹¹.

In preparing such a report, the monitoring officer must consult so far as practicable with the person who is for the time being designated as the head of the authority's paid service¹² and with its chief finance officer¹³, and, as soon as practicable after the report has been prepared by

him or his deputy, arrange for a copy of it to be sent to each member of the authority¹⁴ and, where the relevant authority has a mayor and council manager executive¹⁵, the council manager of the authority¹⁶.

It is the duty of the relevant authority or committee¹⁷ to consider any report by a monitoring officer or his deputy at a meeting held not more than 21 days after copies of the report are first sent to members of the authority or committee¹⁸. The authority must ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report¹⁹.

Where a relevant authority is operating executive arrangements²⁰, the monitoring officer of that authority is responsible for performing the following duties²¹:

- 376 (a) if at any time it appears to him that any proposal, decision or omission, in the course of the discharge of functions of the relevant authority, by or on behalf of the relevant authority's executive, constitutes, has given rise to or is likely to, or would give rise to any of the prescribed events²², to prepare a report to the executive of the authority with respect to that proposal, decision or omission²³.
- 377 (b) in preparing such a report²⁴, the monitoring officer must consult so far as practicable with the person who is for the time being designated as the head of the authority's paid service and with its chief finance officer²⁵, and as soon as practicable after such a report has been prepared by him or his deputy, the monitoring officer must arrange for a copy of it to be sent to each member of the authority and, where the authority has a mayor and council manager executive, the council manager²⁶.

It is the duty of the authority's executive to consider any such report made by a monitoring officer or his deputy at a meeting held not more than 21 days after copies of the report are first sent to members of the executive²⁷, and to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report²⁸. As soon as practicable after the executive has concluded its consideration of the report of the monitoring officer or his deputy, it must prepare a report which specifies what action (if any) the executive has taken in response to the report of the monitoring officer or his deputy, what action (if any) the executive proposes to take in response to that report and when it proposes to take that action, and the reasons for taking the action specified in the executive's report or, as the case may be, for taking no action²⁹. As soon as practicable after the executive has prepared that report it must arrange for a copy of it to be sent to each member of the authority and the authority's monitoring officer³⁰.

1 For these purposes, 'relevant authority' means: (1) a county council; (2) a county borough council; (3) a district council; (4) a London borough council; (5) the Common Council of the City of London in its capacity as a local authority, police authority or port health authority; (6) the Council of the Isles of Scilly; (7) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 of that Act applies; (8) a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority; (9) an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities); (10) an authority established under the Local Government Act 1985 s 10 (waste disposal authorities) (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620); (11) a joint authority established by Pt IV (ss 23-42) (see PARA 47 et seq) or the London Fire and Emergency Planning Authority; (12) any body established pursuant to an order under s 67 (successors to residuary bodies) (see PARA 17); and (13) the Broads Authority: Local Government and Housing Act 1989 s 5(8) (definition amended by the Local Government Act 2000 s 107, Sch 5 para 24(1), (7)), Local Government and Housing Act 1989 s 21(1). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to fire and rescue authorities constituted by the Fire and Rescue Services Act 2004 s 2, or a scheme under s 4, see **FIRE SERVICES**. As to the London Fire and Emergency Planning Authority

see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to joint authorities see PARA 47 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

2 As to the meaning of 'officer of a local authority' see PARA 427 note 2.

3 Local Government and Housing Act 1989 s 5(1)(a), (b) (amended by SI 2001/2237; and SI 2002/808). Such a post is politically restricted: see PARA 122.

The monitoring officer must perform his duties personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for these purposes: Local Government and Housing Act 1989 s 5(7). Section 5(7) has effect subject to the Local Government Act 2000 s 82A (see PARA 243); Local Government and Housing Act 1989 s 5(7A) (added by the Local Government Act 2003 s 113(3)). Any reference in s 5 to the duties of a monitoring officer imposed by that provision, or to the duties of a monitoring officer under that provision, includes a reference to the functions which are conferred on a monitoring officer by virtue of the Local Government Act 2000 Pt III (ss 49-83): Local Government and Housing Act 1989 s 5(8A) (added by the Local Government Act 2000 Sch 5 para 24(1), (8)).

4 The monitoring officer may not be the head of the relevant authority's paid service if he has been designated by: (1) a county council; (2) a county borough council; (3) a district council; (4) a London borough council; (5) the Greater London Authority; or (6) the Common Council of the City of London in its capacity as a local authority, police authority or port health authority: Local Government and Housing Act 1989 s 5(1A), (1B) (s 5(1A), (1B) added by the Local Government Act 2000 Sch 5 para 24(1), (3)).

5 Is a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139) or the Metropolitan Police Authority (see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155).

6 Local Government and Housing Act 1989 s 5(1) (amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 35(a); the Police Act 1996 s 103, Sch 7 para 1(2)(zd); the Greater London Authority Act 1999 s 325, Sch 27 para 62; the Local Government Act 2000 Sch 5 para 24(1), (2); and the Police and Justice Act 2006 Sch 14 para 16). 'Chief finance officer', in relation to a relevant authority, means the officer having responsibility, for the purposes of the Local Government Act 1972 s 151 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Local Government Act 1985 s 73 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Local Government Finance Act 1988 s 112 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), the Greater London Authority Act 1999 s 127(2) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624), or the Local Government and Housing Act 1989 s 6 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624) for the administration of the authority's financial affairs: s 5(8) (definition amended by the Greater London Authority Act 1999 s 132).

As to the head of the authority's paid service see PARA 427.

7 Local Government and Housing Act 1989 s 5(2) (amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 35(b); SI 2001/2237; and SI 2002/808). References in the Local Government and Housing Act 1989 s 5(2), in relation to a relevant authority in England and Wales, to a committee or sub-committee of the authority and to a joint committee on which they are represented are to be taken to include references to any local fisheries committee which includes members so appointed and any sub-committee appointed by such a committee but in relation to any such committee or sub-committee the reference in s 5(3)(b) (see the text and note 15) to each member of the authority has effect as a reference to each member of the committee or, as the case may be, of the committee which appointed the sub-committee: s 5(4) (amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; and the Environment Act 1995 s 120, Sch 24). Where a relevant authority is operating executive arrangements, the monitoring officer of the relevant authority must not make a report under the Local Government and Housing Act 1989 s 5(2) in respect of any proposal, decision or omission unless it is a proposal, decision or omission made otherwise than by or on behalf of the relevant authority's executive: s 5(2B) (added by SI 2001/2237; and SI 2002/808). As to executive arrangements see PARA 303 et seq.

8 'Contravention' includes a failure to comply: Local Government and Housing Act 1989 s 21(3). This would extend to contempt of court proceedings against the authority where there has been non-compliance with court orders: *Mullen v Hackney LBC* [1997] 1 WLR 1103; (1996) 29 HLR 590.

9 Local Government and Housing Act 1989 s 5(2)(a) (amended by the Local Government Act 2000 Sch 5 para 24(1), (6)).

10 Local Government and Housing Act 1989 s 5(2)(aa) (added by the Local Government and Public Involvement in Health Act 2007 ss 182, 241, Sch 12 para 14(1), (2)(a)). Head (2) in the text refers to any such maladministration or injustice as is mentioned in the Local Government Act 1974 Pt III (ss 23-34): see para 839 et seq. No duty arises by virtue of the Local Government and Housing Act 1989 s 5(2)(aa) unless a local commissioner (within the meaning of the Local Government Act 1974: see para 839) has conducted an investigation under Pt III in relation to the proposal, decision or omission concerned: Local Government and Housing Act 1989 s 5(2A) (added by the Local Government Act 2000 Sch 5 para 24(1), (6)).

11 Local Government and Housing Act 1989 Act s 5(2)(c) (added by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 23, 24(1), (2)). The matters referred to in the text are those which the Public Services Ombudsman for Wales would be entitled to investigate under the Public Services Ombudsman (Wales) Act 2005. No duty will arise by virtue of the Local Government and Housing Act 1989 s 5(2)(c) unless the Public Services Ombudsman for Wales has conducted an investigation under the Public Services Ombudsman (Wales) Act 2005 in relation to the proposal, decision or omission concerned: Local Government and Housing Act 1989 s 5(2AA) (added by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 24(1), (3)). As to the Public Services Ombudsman for Wales see **ADMINISTRATIVE LAW**.

12 Ie under the Local Government and Housing Act 1989 s 4: see para 427.

13 Local Government and Housing Act 1989 s 5(3)(a) (amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 35(c)). As to the chief finance officer see para 428.

14 As to members of local authorities see para 117 et seq.

15 As to mayor and council manager executives see para 333. Mayor and council manager executives now apply only in relation to Wales: see para 327.

16 Local Government and Housing Act 1989 s 5(3)(b) (amended by SI 2001/2237; and SI 2002/808).

17 Ie any such committee as is mentioned in the Local Government and Housing Act 1989 s 5(4): see note 7.

18 Local Government and Housing Act 1989 s 5(5)(a). Nothing in the Local Government Act 1972 s 101 (see para 370 et seq) applies to the duty so imposed: Local Government and Housing Act 1989 s 5(5).

19 Local Government and Housing Act 1989 s 5(5)(b), which is expressed to be without prejudice to any duty imposed by virtue of the Local Government Finance Act 1988 s 115 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) para 627). The implementation of a proposal or decision to which a report relates will be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under the Local Government and Housing Act 1989 s 5(5)(a) is concluded: s 5(6). 'Business day', in relation to a relevant authority, means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321) in the part of Great Britain where the area of the authority is situated: Local Government and Housing Act 1989 s 5(8). As to the meaning of 'Great Britain' see para 116 note 18.

20 As to executive arrangements see para 303 et seq.

21 Local Government and Housing Act 1989 s 5A(1) (s 5A added by SI 2001/2237; and SI 2002/808). The monitoring officer must perform his duties personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purpose: s 5A(10) (as so added).

22 The prescribed events are: (1) a contravention, by the relevant authority's executive or any person on behalf of the executive, of any enactment or rule of law; or (2) any such maladministration or failure as is mentioned in the Local Government Act 1974 Pt III (ss 23-34) (see para 839 et seq); or (3) a matter which the Public Services Ombudsman for Wales would be entitled to investigate under the Public Services Ombudsman (Wales) Act 2005: Local Government and Housing Act 1989 s 5A(3) (as so added; and amended by the Local Government and Public Involvement in Health Act 2007 s 182, Sch 12 Pt 2 para 14(1), (3); and the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 25(2)). No duty arises by virtue of head (2) unless a local commissioner has conducted an investigation in relation to the proposal, decision or omission concerned: Local Government and Housing Act 1989 Act s 5A(4) (as so added). No duty arises by virtue of head (3) unless the Public Services Ombudsman for Wales has conducted an investigation under the Public Services Ombudsman (Wales) Act 2005 in relation to the proposal, decision or omission concerned: s 5A(4) (added by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 25(3)). As to the Public Services Ombudsman for Wales see para 267 et seq.

23 Local Government and Housing Act 1989 s 5A(2) (as added: see note 20).

24 Ie under Local Government and Housing Act 1989 Act s 5A(2): see head (a) in the text.

25 Local Government and Housing Act 1989 s 5A(5)(a) (as added: see note 20).

26 Local Government and Housing Act 1989 s 5A(5)(b) (as added: see note 20).

27 Local Government and Housing Act 1989 s 5A(6)(a) (as added: see note 20).

28 Local Government and Housing Act 1989 s 5A(6)(b) (as added: see note 20), which is expressed as being without prejudice to any duty imposed by virtue of the Local Government Finance Act 1988 s 115B. For the purposes of the Local Government and Housing Act 1989 s 5A(6)(b) the implementation of a proposal or decision to which a report by a monitoring officer or his deputy relates is suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under s 5A(6)(a) (see the text and note 26) is concluded: s 5A(7) (as added: see note 20).

29 Local Government and Housing Act 1989 s 5A(8) (as added: see note 20).

30 Local Government and Housing Act 1989 s 5A(9) (as added: see note 20).

UPDATE

429 Monitoring officer

TEXT AND NOTES 1-19--Local Government and Housing Act 1989 s 5 further amended: Marine and Coastal Access Act 2009 Sch 14 para 13 (not yet in force).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(iii) Other Officers/430. Other officers.

(iii) Other Officers

430. Other officers.

Local authorities¹ must appoint particular officers to assist with or carry out some of their functions, including:

- 378 (1) in the case of a children's services authority in England², a director of children's services³;
- 379 (2) in the case of a local authority having statutory responsibility for local authority social services functions⁴, a director of social services⁵;
- 380 (3) in the case of a local education authority in Wales⁶, a chief education officer⁷;
- 381 (4) registration officers⁸ and returning officers as appropriate⁹;
- 382 (5) agricultural inspectors and agricultural analysts¹⁰;
- 383 (6) in the case of a food authority¹¹, public analysts¹²;
- 384 (7) in the case of a local weights and measures authority¹³, inspectors of weights and measures¹⁴;
- 385 (8) registrars of births, deaths and marriages¹⁵;
- 386 (9) an officer charged with dealing with stray dogs found in the area of the authority¹⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'children's services authority' see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187 note 1.

3 See the Children's Act 2004 s 18; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 190.

4 As to the functions of social service authorities see PARA 588.

5 See the Local Authority Social Services Act 1970 s 6; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1007. In England such an officer is referred to as the director of adult social services: s 6(1A).

6 As to local education authorities see **EDUCATION** 15(1) (2006 Reissue) PARA 20 et seq.

- 7 See the Education Act 1996 s 532; and **EDUCATION** 15(1) (2006 Reissue) PARA 51.
- 8 See the Representation of the People Act 1983 s 8; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 154.
- 9 See the Representation of the People Act 1983 s 835; and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 359; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 91.
- 10 See the Agriculture Act 1970 s 67; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 958.
- 11 As to the meaning of 'food authority' see **FOOD** vol 18(2) (Reissue) PARA 251.
- 12 See the Food Safety Act 1990 s 27; and **FOOD** vol 18(2) (Reissue) PARA 268.
- 13 As to the meaning of 'local weights and measures authority' see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.
- 14 See the Weights and Measures Act 1985 s 72; and **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 23.
- 15 See the Registration Services Act 1953 ss 5, 6; and **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 609-610.
- 16 See the Environmental Protection Act 1990 s 149; and **ANIMALS** vol 2 (2008) PARA 926.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(iii) Other Officers/431. Proper officers.

431. Proper officers.

Certain functions in connection with the organisation of local government have been enacted¹ in the form of administrative duties which the enactment requires to be exercised by the proper officer of the local authority².

In relation to any purpose and any local authority³ or other body or any area, the 'proper officer' is the officer appointed for that purpose by that body or for that area as the case may be⁴. Statutory provision has been made for the authentication of notices, orders or other documents by the proper officer of the local authority⁵.

1 Ie by the Local Government Act 1972 or by virtue of the substituted references which that Act provides for references to specified officers in earlier legislation.

2 The matters concerned in the functions so referred to the proper officers are mainly those of receiving or giving notices, certifying or authenticating documents, keeping registers, issuing summonses for meetings etc, and in this sense the functions are administrative. The provisions of the Local Government Act 1972 s 112(4) specifically exclude from the substitution of references to proper officers references to the small class of specific statutory offices whose specifically titled officers are retained under the reorganisation legislation: see PARA 425 note 8. As to the discharge of functions see PARA 369 et seq.

3 As to the meaning of 'local authority' see PARA 23.

4 Local Government Act 1972 s 270(3).

5 See PARA 574.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(iii) Other Officers/432. Political assistants.

432. Political assistants.

A person is appointed as an assistant for a political group if: (1) the appointment is made for the purpose of providing assistance in the discharge of any of their functions¹ as members of a relevant authority², to the members of any political group to which members of the authority belong³; (2) the appointment is to one of not more than three posts which a relevant authority has decided to create for these purposes⁴; and (3) each of those posts falls, under the standing orders of the authority, to be filled from time to time in accordance with the wishes of a political group to which the post has been allocated under those standing orders⁵. The terms of appointment must be such as secure that the annual rate of remuneration for the post is less than the relevant amount⁶, and that the appointment terminates at or before the end of the day in the appropriate year on which the authority holds its annual meeting⁷.

Nothing in the Local Government and Housing Act 1989⁸ or in any enactment, standing order or rule of law by virtue of which it is unlawful for a relevant authority or any committee or sub-committee⁹ of such an authority to have regard to any person's political activities or affiliations in determining whether he should be appointed to any paid office¹⁰ or employment under the authority applies to the appointment of a person in pursuance of these provisions¹¹.

Neither a relevant authority nor any committee or sub-committee of a relevant authority is to exercise any power¹² so as to arrange for the discharge of any of the authority's functions by any person who holds a post under the authority to which he was appointed in pursuance of these provisions¹³. Nor may an executive, a committee of an executive nor a member of an executive¹⁴, of a relevant authority, exercise any power¹⁵ so as to arrange for the discharge of any of the authority's functions by any person who holds a post under the authority to which he was appointed in pursuance these provisions¹⁶. Finally, an area committee¹⁷ of a relevant authority may not exercise any power¹⁸ so as to arrange for the discharge of any of the authority's functions by any person who holds a post under the authority to which he was appointed in pursuance of these provisions¹⁹.

No person holding any office or employment under a relevant authority is to be required to work under the direction of a person holding a post to which he was appointed in pursuance of these provisions except for the purpose of providing that person, or the political group to which his post is allocated, with secretarial or clerical services²⁰.

Where the members of a relevant authority are divided into different political groups, a group qualifies for a post if: (a) the membership of that group comprises at least one-tenth of the membership of the authority²¹; (b) the number of the other groups, if any, which are larger than that group does not exceed two²²; and (c) where the number of the other groups which are the same size as or larger than that group exceeds two, the authority has determined that that group should be a group to which a post is allocated²³. It is the duty of a relevant authority, before making any allocation in a case in which there are groups which would qualify for posts if head (c) above were disregarded, to make such determinations under head (c) above as secure that there are no more nor less than three groups which do qualify for a post²⁴. However, where the members of a relevant authority are divided into political groups only one of which has a membership that comprises one-tenth or more of the membership of the authority, the groups qualifying for a post are to be that group and one other group²⁵, and the other group is to be the one with the next largest membership or, in a case in which there is more than one group with the next largest membership, such one of those groups as may be determined by the authority²⁶. In such a case, it is the duty of the authority to determine which of the groups with the next largest membership is to qualify for a post before making any allocation to the group with the largest membership²⁷.

1 As to the discharge of functions generally see PARA 369 et seq.

2 For the purposes of the Local Government and Housing Act 1989 s 9 'relevant authority' means the council of any county, county borough, district or London borough: s 9(11) (amended by SI 1996/3071). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 Local Government and Housing Act 1989 s 9(2)(a).

4 Local Government and Housing Act 1989 s 9(2)(c).

5 Local Government and Housing Act 1989 s 9(2)(d). The standing orders of a relevant authority the members of which are divided into different political groups must, for these purposes: (1) prohibit the making of an appointment to any post allocated to a political group until the authority has allocated a post to each of the groups which qualify for one; (2) prohibit the allocation of a post to a political group which does not qualify for one; and (3) prohibit the allocation of more than one post to any one political group: s 9(5). As to standing orders with respect to staff see PARA 434.

6 For these purposes, the annual rate of remuneration for a post under a relevant authority is less than the relevant amount if the annual rate of remuneration in respect of the post: (1) is less than £13,500 or such higher amount as the Secretary of State or the Welsh Ministers may by order made by statutory instrument specify; and (2) where that post is a part-time post, would be less than that amount if it were a full-time post and carried remuneration at the same rate: Local Government and Housing Act 1989 s 9(4). An order made by the Secretary of State in relation to England or the Welsh Ministers in relation to Wales under head (1) above may, instead of specifying an amount, specify a point on a relevant specified scale (ie a scale consisting of points and of amounts corresponding to those points): s 9(4A), (4B) (ss 9(4A)-(4C) added by the Local Government and Public Involvement in Health Act 2007 s 204). While an order made by virtue of the Local Government and Housing Act 1989 s 9(4A) is in force, the amount that at that time corresponds to the point specified by the order is to be treated as specified by the order: s 9(4C) (as so added). In relation to England, the specified amount is £34,986: Local Government (Assistants for Political Groups) (Remuneration) (England) Order 2006, SI 2006/1509, art 2. In relation to Wales the point specified for the purposes of the Local Government and Housing Act 1989 s 9(4)(a) is spinal column point 44 of the salary scales for local government officers incorporated in the National Joint Council's Scheme: see the Local Government (Assistants for Political Groups) (Remuneration) (Wales) Order 2009, SI 2009/40, arts 1(2), 3(1). The amount which corresponds to that point is such amount as is published by the National Joint Council from time to time with respect to full-time posts under a local authority in England and Wales: art 3(2). 'National Joint Council' means the National Joint Council for Local Government Services: art 2. 'National Joint Council's Scheme' means the National Joint Council's Scheme of Conditions of Service: art 2. As to the terms and conditions see PARA 437.

As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

7 Local Government and Housing Act 1989 s 9(2)(b), (3)(a). The annual meeting referred to in the text is a meeting which the authority is required to hold under the Local Government Act 1972 s 99, Sch 12 Pt I para 1: see PARA 628. For the purposes of the Local Government and Housing Act 1989 s 9, 'appropriate year', in relation to a post held by any person under a relevant authority, means: (1) where the authority is subject to whole council elections by virtue of the Local Government Act and Public Involvement in Health Act 2007 Pt II Ch 1 (ss 31-54) the period of 12 months beginning with the first such election to be held after that person is appointed to that post; and (2) in any other case, the period of 12 months beginning with the third anniversary of that person's appointment to that post: Local Government and Housing Act 1989 s 9(11) (amended by Local Government and Public Involvement in Health Act 2007 s 61, Sch 2). As to local government elections generally see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS**.

8 Ie Local Government and Housing Act 1989 s 7(1): see PARA 425.

9 As to committees and sub-committees see PARA 371 et seq.

10 As to the meaning of 'paid office' see PARA 427 note 2.

11 Local Government and Housing Act 1989 s 9(1).

12 Ie under the Local Government Act 1972 s 101 (see PARA 370) or the Local Government Act 2000 Pt II (ss 10-48): Local Government and Housing Act 1989 s 9(8)(a), (c) (amended by SI 2001/2237; SI 2002/808).

13 See the Local Government and Housing Act 1989 s 9(8) (amended by SI 2001/2237; SI 2002/808).

14 As to executive arrangements see PARA 303 et seq.

15 Ie under the Local Government Act 2000 ss 14-18 (see PARAS 357-360) or the Local Government Act 1972 s 101(5) (see PARA 380): Local Government and Housing Act 1989 s 9(8A)(a), (b) (as added: see note 16).

16 See the Local Government and Housing Act 1989 s 9(8A) (s 9(8A), (8B) added by SI 2001/2237; SI 2002/808).

17 'Area committee' has the same meaning as in the Local Government Act 2000 s 18 (see PARA 360): Local Government and Housing Act 1989 s 9(11).

18 le under arrangements made under regulations made under the Local Government Act 2000 s 18 (see PARA 360): Local Government and Housing Act 1989 s 9(8B) (as added: see note 16).

19 Local Government and Housing Act 1989 s 9(8B) (as added: see note 16).

20 Local Government and Housing Act 1989 s 9(9).

21 Local Government and Housing Act 1989 s 9(6)(a). For these purposes 'membership', in relation to a relevant authority, means the number of persons who are for the time being members of the authority: s 9(11).

22 Local Government and Housing Act 1989 s 9(6)(b).

23 Local Government and Housing Act 1989 s 9(6)(c).

24 Local Government and Housing Act 1989 s 9(6).

25 Local Government and Housing Act 1989 s 9(7)(a).

26 Local Government and Housing Act 1989 s 9(7)(b).

27 Local Government and Housing Act 1989 s 9(7).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(iii) Other Officers/433. Power to make provision in relation to political assistants.

433. Power to make provision in relation to political assistants.

The Secretary of State or the Welsh Ministers¹ may², for the purposes of the statutory provisions³ and any standing orders⁴ relating to appointment of political assistants, by regulations make provision⁵: (1) as to the circumstances in which the members of a relevant authority⁶ are to be treated as divided into different political groups⁷; (2) as to the persons who are to be treated as members of such a group and as to when a person is to be treated as having ceased to be a member of such a group⁸; (3) requiring the question whether a person is or is not a member of a political group to be determined in such manner as may be provided for by or under the regulations⁹; (4) requiring a relevant authority from time to time to review allocations made for the purposes of the appointment of political assistants¹⁰; (5) specifying the manner in which, and times at which, the wishes of a political group are to be expressed and the consequences of a failure by such a group to express its wishes¹¹. Regulations so made may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State or the Welsh Ministers consider appropriate¹².

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 le without prejudice to the Local Government and Housing Act 1989 s 9(8): see PARA 432.

3 le Local Government and Housing Act 1989 s 9: see PARA 432.

4 As to standing orders with respect to staff see PARA 434.

5 Local Government and Housing Act 1989 s 9(10). As to the regulations that have been made under s 9(10) see the Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553 (amended by SI 1991/1398; SI 1993/1339; SI 1998/1918; and SI 1999/500).

- 6 As to the meaning of 'relevant authority' see PARA 432 note 2.
- 7 Local Government and Housing Act 1989 s 9(10)(a).
- 8 Local Government and Housing Act 1989 s 9(10)(b).
- 9 Local Government and Housing Act 1989 s 9(10)(c).
- 10 Local Government and Housing Act 1989 s 9(10)(d).
- 11 Local Government and Housing Act 1989 s 9(10)(e).
- 12 Local Government and Housing Act 1989 s 9(10).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(iv) Standing Orders/434. Duty to adopt standing orders with respect to staff.

(iv) Standing Orders

434. Duty to adopt standing orders with respect to staff.

The Secretary of State or the Welsh Ministers¹ may by regulations require relevant authorities², subject to such variations as may be authorised by the regulations, to incorporate such provision as the regulations may prescribe in standing orders relating to their staff and to make or refrain from making such other modifications of any such standing orders as may be so prescribed³. Standing orders relate to the staff of a relevant authority if they make provision for regulating the appointment of persons to paid office or employment under the authority or the dismissal of persons holding such office or employment and the taking of other disciplinary action against such persons⁴.

The regulations may require a relevant authority's standing orders:

- 387 (1) so to restrict the manner of exercising the power to take steps for or towards the selection of candidates for interview, or for appointment, as to make it exercisable only by the authority itself, by a committee or sub-committee of the authority or by particular officers of the authority⁵;
- 388 (2) to restrict the power of the authority or any of its committees or sub-committees (a) to give directions to persons making appointments on its behalf as to the identity of the individuals to be appointed; or (b) otherwise to interfere with the making of appointments by such persons⁶;
- 389 (3) to require the monitoring officer⁷ of the authority to prepare a report to the authority in respect of every proposed appointment of a person to a politically restricted post⁸;
- 390 (4) to require every such report to state whether, in the opinion of the monitoring officer, the proposed appointment can be made (a) without any contravention of any relevant statutory provision⁹; and (b) without any matter being taken into account which could not properly be taken into account, and, if in his opinion it cannot be so made, his reasons¹⁰; and
- 391 (5) to prohibit the authority or any committee, sub-committee or other person acting on its behalf from dismissing or taking other disciplinary action against a person holding office or employment under the authority except in accordance with recommendations contained in a report made to the authority by an independent person of a description prescribed by the regulations¹¹.

The regulations may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State or the Welsh Ministers consider appropriate¹².

- 1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 2 For these purposes, 'relevant authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, a police authority or port health authority, and the Council of the Isles of Scilly: Local Government and Housing Act 1989 ss 8(5)(a), 21(1)(a)-(e). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36.
- 3 Local Government and Housing Act 1989 s 8(1). As to regulations made under s 8 see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202; the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384; and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275.
- 4 Local Government and Housing Act 1989 s 8(2).
- 5 Local Government and Housing Act 1989 s 8(3)(a). As to the meaning of 'officer of a local authority' see PARA 427 note 2.
- 6 Local Government and Housing Act 1989 s 8(3)(b).
- 7 As to the monitoring officer see PARA 429.
- 8 Local Government and Housing Act 1989 s 8(3)(c). As to politically restricted posts see PARA 122.
- 9 ie any provision made by or under the Local Government and Housing Act 1989 Pt I (ss 1-21).
- 10 Local Government and Housing Act 1989 s 8(3)(d).
- 11 Local Government and Housing Act 1989 s 8(3)(e).
- 12 Local Government and Housing Act 1989 s 8(4). That provision may include:
 - 725 (1) provision which, for the purposes of any such restriction as is mentioned in s 8(3) (see heads (1)-(5) in the text), makes modifications of any enactment with respect to the delegation of a relevant authority's functions (s 8(4)(a));
 - 726 (2) provision which (with or without modifications) applies provisions of s 5 (see PARA 429) in relation to any report prepared in consequence of regulations made by virtue of s 8(3)(c) (see head (3) in the text) (s 8(4)(b));
 - 727 (3) provision specifying the consequences in relation to any appointment or contract of employment, any proceedings on a complaint to an employment tribunal, and any expenditure incurred by the authority, of any contravention of standing orders made in pursuance of the regulations (s 8(4)(c) (amended by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a))); and
 - 728 (4) without prejudice to the Local Government and Housing Act 1989 s 191(1) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 4), special provision in relation to the appointment of persons: (a) in pursuance of s 9 (see PARA 432); (b) for the purposes of functions exercised by joint committees on which relevant authorities are represented; and (c) in pursuance of regulations made under the Local Government Act 2000 s 23, Sch 1 para 6 (see PARA 328) (s 8(4)(d) (substituted by SI 2001/1517; and SI 2002/803)).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(v) Disqualification/435. Disqualification if holding a politically restricted post.

(v) Disqualification

435. Disqualification if holding a politically restricted post.

A person who holds a politically restricted post¹ under that local authority or any other local authority in Great Britain² is disqualified under the Local Government Act 1972³ from becoming, whether by election or otherwise, or remaining, a member of a local authority⁴.

1 As to the persons to be regarded as holding politically restricted posts under a local authority see PARA 122; and as to exemption from political restriction see PARAS 121, 123.

2 See the Local Government and Housing Act 1989 ss 1-3B; and PARAS 120-124. As to the meaning of 'Great Britain' see PARA 116 note 18.

3 As to disqualification under the Local Government Act 1972 see PARA 119.

4 As to the meaning of 'local authority' see PARA 23. As to members of local authorities see PARA 117 et seq. As to local government elections see PARA 126 et seq; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(1) APPOINTMENT OF OFFICERS/(v) Disqualification/436. Members disqualified for appointment.

436. Members disqualified for appointment.

So long as a person is, and for 12 months after he ceases to be, a member of a local authority¹, that person is disqualified for being appointed or elected by that authority to any paid office², other than to the office of chairman or vice-chairman³ or, in the case of a local authority which is operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive⁴. However, a parish or community council⁵ may appoint one or more persons from among their number to be officers of the council, without remuneration⁶.

1 As to the meaning of 'local authority' see PARA 23. The Local Government Act 1972 s 116 has effect as if a National Park Authority were a local authority by virtue of the Environment Act 1995 s 63, Sch 7 para 13(6). See also PARA 462 note 3.

2 This includes an office which is normally salaried where the person appointed agrees to act without pay: *A-G v Ulverston UDC* [1944] Ch 242, [1944] 1 All ER 475.

3 As to the office of chairman and vice-chairman see PARA 144 et seq.

4 Local Government Act 1972 s 116 (amended by the Local Government Act 1985 s 102, Sch 17; SI 2001/2237; and SI 2002/808). As to executive arrangements see PARA 303 et seq.

5 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

6 Local Government Act 1972 s 112(5).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/437. In general.

(2) CONDITIONS OF SERVICE

437. In general.

The staff employed by local authorities are the subject of a comprehensive series of national agreements made between those representing¹ the local authority employers² on the one hand and the trade unions representing the employees³ on the other, by which the levels of remuneration⁴ and the conditions of employment are the subject of fixed or recommended⁵ terms⁶. These terms are usually incorporated in the specific appointments or engagements⁷ representing the contracts of service of the employees concerned⁸. However, in those cases where the nationally agreed terms are not incorporated by formal reference in the contracts of service, those terms may be incorporated impliedly⁹.

Local authorities are subject to the law regulating employment in all general respects and are thus required to observe the statutory provisions with regard to the numerous matters in which terms of employment are so specified¹⁰.

Where a local authority¹¹ permits one of its employees¹² to take time off for the purpose of performing the duties of a member of a relevant council¹³ and those duties do not include the duties of chairman¹⁴ of the council, it is unlawful¹⁵ for the authority to make any payment of remuneration or other payment to that employee in respect of so much (if any) of any time off for that purpose as is in excess of 208 hours in any one financial year¹⁶ and is time off to which the employee would not be entitled apart from his membership of that council¹⁷.

1 A local authority is required to secure that, so far as practicable, the interests of that authority in any negotiations with respect to the terms and conditions on which persons in local authority employment hold office or are employed are never represented, whether directly or indirectly, by a person who is both a member of the authority and in such employment, or by a person who is both a member of the authority and an official or employee of a trade union whose members include persons in local authority employment: Local Government and Housing Act 1989 s 12(1). A person is to be treated as in local authority employment if he holds any paid office or employment under a local authority or any such paid office or employment under any other person as, by virtue of the Local Government Act 1972 s 80(1)(a) (see PARA 119), disqualifies him for membership of any authority: Local Government and Housing Act 1989 s 12(2). As to the meaning of 'paid office under a local authority' see PARA 427 note 2. 'Member', in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of its constituent or affiliated trade unions; and 'official' and 'trade union' have the same meanings as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see ss 1, 119; and **EMPLOYMENT**): Local Government and Housing Act 1989 s 12(2) (definitions amended by the Trade Union and Labour Relations (Consolidation) Act 1992 Sch 2 para 39).

2 Local Government Employers (whose predecessor organisations were the Local Authorities' Conditions of Service Advisory Board (1947-1991), the Local Government Management Board (1991-1999) and the Employer's Organisation for Local Government (1991-2006)) was established in 2006 by the Local Government Association and is a company limited by guarantee. The Improvement and Development Agency, in partnership with Local Government Employers and the Department for Communities and Local Government, has responsibility for the Local Government Pay and Workforce Strategy.

3 Local authority employers and trade unions meet to resolve agreements as to pay and conditions of service.

4 It has been held that an agreement to increase the salary of an authority's principal chief officer was void because it was made entirely for the purpose of increasing his redundancy and pension entitlements and so was not a decision within the authority's power under the Local Government Act 1972 s 112 (see PARA 425) to fix rates of pay: *Hinckley and Bosworth Borough Council v Shaw* (1999) 1 LGLR 385. See also *Watts v Barking and Dagenham London Borough Council* [2003] EWHC 263 (Ch), [2004] LGR 48, [2003] ICR 1059, in which a long service award resulting in enhanced pension was held to be lawful.

Certain of the wage and salary joint negotiating committees or councils for chief executives, chief officers and local government workers which have been established in local government make provision for reference of disputes to arbitration by the Advisory, Conciliation and Arbitration Service (see **EMPLOYMENT** vol 41 (2009) PARA 1182 et seq) or by the Central Arbitration Committee (see **EMPLOYMENT** vol 41 (2009) PARA 1195 et seq).

5 Certain of the joint councils or committees record their agreements in the form of specific levels of pay and specific conditions; others record their agreements in the form of recommendations. For example, the terms agreed by the National Joint Council for Local Government Services are incorporated into a collective agreement known as the Single Status agreement or the Green Book. Local authorities are not bound by the recommendations when deciding what is reasonable. In *Carr v District Auditor for No 1 Audit District (Alston-woth-Garrigill)* (1952) 50 LGR 538 the High Court held 'the sole function of any such recommendations can be, and can only be, to give guidance to the members of the council as to what may be considered to be objectively reasonable'. See also *Pickwell v Camden London Borough Council* [1983] QB 962, [1983] 1 All ER 602, DC (a pay settlement will not be ultra vires merely because it exceeds the nationally agreed figure).

6 Terms normally include scales or levels of pay, hours of duty, holiday rules, sick pay, expenses, trade union membership, period of notice, grievance and disciplinary procedures, appeals and arbitrations. Nothing in any enactment providing for the payment by a local authority of expenses of its members is to be taken to limit the power of the local authority to defray expenses properly incurred by an officer of the authority as such: Local Government (Financial Provisions) Act 1963 s 5 (amended by the Statute Law (Repeals) Act 1976). As to the payment of members' expenses see PARA 165 et seq.

7 Not later than two months after the beginning of an employee's period of employment the employer must give to the employee a written statement containing particulars of the terms of employment: see the Employment Rights Act 1996 ss 1-7, 198; and **EMPLOYMENT** vol 39 (2009) PARA 94 et seq.

8 As to the nature of a contract of employment see **EMPLOYMENT** vol 39 (2009) PARA 2.

9 See **EMPLOYMENT** vol 39 (2009) PARA 91. There may be appointments, particularly in the case of new types of duty, for which no recognised terms have been agreed, and there may be matters not covered by the recognised terms, and in these matters the discretion of the local authority is that stated in PARA 425.

10 See in particular the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996, the National Minimum Wage Act 1998 and regulations made under them. See further **EMPLOYMENT**. The following subjects are particularly significant: written particulars of terms of contract and of changes (see **EMPLOYMENT** vol 39 (2009) PARA 94 et seq); health and safety at work, safety representatives and safety committees (see **HEALTH AND SAFETY AT WORK; EMPLOYMENT** vol 39 (2009) PARA 36 et seq); time off work for trade union duties (see **EMPLOYMENT** vol 40 (2009) PARA 972) and for public duties (see **EMPLOYMENT** vol 39 (2009) PARAS 312-313); restrictions on deductions from wages (see **EMPLOYMENT** vol 39 (2009) PARA 230 et seq); right to a minimum wage (see **EMPLOYMENT** vol 39 (2009) PARA 142 et seq); restrictions on working time (see **EMPLOYMENT** vol 39 (2009) PARA 199 et seq); right to maternity leave and parental leave (see **EMPLOYMENT** vol 39 (2009) PARA 322 et seq); rights relating to disclosures in the public interest (see **EMPLOYMENT** vol 39 (2009) PARAS 56-57) or to seek other employment or make training arrangements after dismissal for redundancy (see **EMPLOYMENT** vol 39 (2009) PARA 303); protection in respect of trade union membership (see **EMPLOYMENT** vol 40 (2009) PARA 997 et seq); the procedure for handling redundancies (see **EMPLOYMENT** vol 41 (2009) PARA 1152 et seq); redundancy payments (see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq); the right not to be unfairly dismissed, and to appeal in that respect to an employment tribunal (see **EMPLOYMENT** vol 40 (2009) PARA 712 et seq); continuity of employment for redundancy payments purposes (see **EMPLOYMENT** vol 39 (2009) PARA 105 et seq); consultation requirements for collective redundancies (see **EMPLOYMENT**); and restrictions on contracting out (see **EMPLOYMENT**). In the last-mentioned respect it is relevant that certain of the joint negotiating bodies in local government have established grievance or disciplinary procedures to enable internal or other appeals to be heard. These procedures do not exclude the statutory rights of appeal and otherwise, in that they have not been the subject of application to or designation by the Secretary of State under the Employment Rights Act 1996 s 110 (see **EMPLOYMENT** vol 40 (2009) PARAS 716-717).

11 As to the meaning of 'local authority' see PARA 23.

12 'Employee' has the same meaning as in the Employment Rights Act 1996 (see **EMPLOYMENT** vol 39 (2009) PARA 2): Local Government and Housing Act 1989 s 10(2) (definition amended by the Employment Rights Act 1996 Sch 1 para 44).

13 'Relevant council' means the council of any county, county borough, district or London borough, the Common Council of the City of London, or a parish or community council: Local Government and Housing Act 1989 s 10(2) (definition amended by the Employment Rights Act 1996 Sch 1 para 44; and SI 1996/3071). The Employment Rights Act 1996 s 50(3) (meaning of duties of a member of a body) (see **EMPLOYMENT** vol 39 (2009) PARA 312) applies for the purposes of the Local Government and Housing Act 1989 s 10: s 10(2).

14 'Chairman', in relation to a relevant council, includes any corresponding office the holder of which is referred to as mayor or Lord Mayor or by any other description: Local Government and Housing Act 1989 s 10(2).

15 It is unlawful notwithstanding anything in the Employment Rights Act 1996 s 50(4) (conditions of time off for public duties): see **EMPLOYMENT** vol 39 (2009) PARA 312.

16 'Financial year' means the 12 months ending with 31 March: Local Government and Housing Act 1989 s 10(2).

17 Local Government and Housing Act 1989 s 10(1) (amended by the Employment Rights Act 1996 Sch 1 para 44).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/438. Political restriction of certain officers.

438. Political restriction of certain officers.

The terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority¹ are deemed to incorporate such requirements for restricting his political activities as may be prescribed².

1 As to the meaning of 'local authority' see PARA 23.

2 See the Local Government and Housing Act 1989 s 1(5). As to the requirements that have been prescribed see the Local Government Officers (Political Restrictions) Regulations 1990, SI 1990/851 (amended in relation to England by SI 1999/715; and in relation to Wales by SI 1999/1665). As to politically restricted posts see PARAS 120-124.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/439. Code of conduct for local government employees.

439. Code of conduct for local government employees.

The Secretary of State¹ may by order issue a code as regards the conduct which is expected of qualifying employees² of relevant authorities³ in England and police authorities⁴ in Wales⁵, and the Welsh Ministers may by order issue a code as regards the conduct which is expected of qualifying employees⁶ of relevant authorities in Wales other than police authorities⁷. This power to issue a code includes power⁸ to issue a separate code for council managers⁹ and power to revise any code which has been issued¹⁰.

Before making an order for such a code, the Secretary of State must consult¹¹ such representatives of relevant authorities in England, and of employees of such authorities as he considers appropriate¹², the Audit Commission¹³, and the Commission for Local Administration in England¹⁴. Before making an order for such a code so far as it relates to police authorities in Wales, the Secretary of State must consult¹⁵ such representatives of police authorities in Wales and employees of such authorities as he considers appropriate¹⁶, the Auditor General for Wales¹⁷, the Public Services Ombudsman for Wales¹⁸, and the Welsh Ministers¹⁹. Before making an order for such a code, the Welsh Ministers must consult²⁰ such representatives of relevant authorities in Wales and employees of such authorities as it considers appropriate²¹, the Auditor General for Wales²², and the Public Services Ombudsman for Wales²³.

The terms of appointment or conditions of employment of every qualifying employee of a relevant authority are to be deemed to incorporate any code for the time being under this provision which is applicable²⁴.

1 As to the Secretary of State see PARA 96.

2 For these purposes, 'qualifying employee', in relation to a relevant authority, means an employee of the authority other than an employee falling within any description of employee specified in regulations under the Local Government Act 2000 s 82(8): s 82(8). The power to make regulations under s 82(8) is to be exercised: (1) in relation to England, by the Secretary of State; and (2) in relation to Wales, by the Welsh Ministers: s 82(9). As to the Welsh Ministers see PARA 97.

3 As to the meaning of 'relevant authorities' see PARA 232 note 4.

4 For these purposes, 'police authority' means a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Local Government Act 2000 s 83(1).

5 Local Government Act 2000 s 82(1). At the date at which this volume states the law no such orders had been made under s 82(1).

6 See note 2. In Wales, firefighters and teachers are not qualifying employees for these purposes: Code of Conduct (Non-Qualifying Local Government Employees) (Wales) Regulations 2001, SI 2001/2278 (amended by SI 2005/2929).

7 See the Local Government Act 2000 s 82(2). As to such orders in relation to Wales see the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001/2280.

8 Local Government Act 2000 s 82(3).

9 Local Government Act 2000 s 82(3)(a). The council managers referred to in the text are those within the meaning of Pt II (ss 10-48): see PARA 327.

10 Local Government Act 2000 s 82(3)(b).

11 Local Government Act 2000 s 82(4).

12 Local Government Act 2000 s 82(4)(a).

13 Local Government Act 2000 s 82(4)(b). As to the Audit Commission see PARA 744 et seq.

14 Local Government Act 2000 s 82(4)(c). As to the Commission for Local Administration in England see PARA 839 et seq.

15 Local Government Act 2000 s 82(5).

16 Local Government Act 2000 s 82(5)(a).

17 Local Government Act 2000 s 82(5)(aa) (added by the Public Audit (Wales) Act 2004 Sch 2 paras 52, 55(1), (2)). As to the Auditor General for Wales see PARA 796 et seq.

18 Local Government Act 2000 s 82(5)(b) (substituted by the Public Services Ombudsman (Wales) Act 2005 Sch 4 paras 1, 23). As to the Public Services Ombudsman for Wales see PARA 843.

19 Local Government Act 2000 s 82(5)(c).

20 Local Government Act 2000 s 82(6).

21 Local Government Act 2000 s 82(6)(a).

22 Local Government Act 2000 s 82(6)(b) (substituted by the Public Audit (Wales) Act 2004 Sch 2 paras 52, 55(1), (3)).

23 Local Government Act 2000 s 82(6)(c) (substituted by the Public Services Ombudsman (Wales) Act 2005 Sch 4 paras 1, 23).

24 Local Government Act 2000 s 82(7).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/440. Disclosure of interests.

440. Disclosure of interests.

If it comes to the knowledge of an officer¹ employed² by a local authority³ that a contract⁴ in which he has any pecuniary interest⁵, whether direct or indirect⁶ (not being a contract to which he is himself a party), has been or is proposed to be entered into by the authority or any committee of it, he must as soon as practicable give written notice to the authority of the fact that he is interested in it⁷. Any person who contravenes this provision is liable on summary conviction to a fine⁸.

1 As to the meaning of 'officer' see PARA 425 note 3.

2 Ie whether under the Local Government Act 1972 or under any other enactment. As to the meaning of 'enactment' see PARA 12 note 1.

3 As to the meaning of 'local authority' see PARA 23. References in the Local Government Act 1972 s 117 to a local authority include references to a joint committee appointed under Pt VI (ss 101-109) (see PARA 369 et seq) or any other enactment: s 117(4). See also PARA 462 note 3.

4 It is important to note that in the case of the interests of officers to be disclosed under this provision it is interest in a contract, but not in other matters (as in the case of councillors), which is within the requirement to disclose. However, a contract may be oral as well as written: see PARA 492. Where a local authority employed one of its officers, outside of his ordinary duties, to superintend the execution of works on its behalf, and he was paid a commission, it was held that the officer had an interest in the contract; this would appear to be the case even if he had been paid by way of an 'allowance': *R v Ramsgate Corp* (1889) 23 QBD 66.

5 As to pecuniary interests see PARA 288.

6 For these purposes, an officer is to be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of the Local Government Act 1972 s 95 (see PARA 288) had he been a member of the authority: Local Government Act 1972 s 117(1).

7 Local Government Act 1972 s 117(1).

8 Local Government Act 1972 s 117(3). The fine must not exceed level 4 on the standard scale: s 117(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7. In the case of members a prosecution may only be instituted by or on behalf of the Director of Public Prosecutions (see the Local Government Act 1972 s 94(3); and PARA 286 note 9), but this does not apply in the case of officers' non-disclosure. A prosecution must be brought within six months from the date of the offence: see the Magistrates' Courts Act 1980 s 127(1); and **MAGISTRATES** vol 29(2) (Reissue) PARA 589.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/441. Accepting other fees or rewards.

441. Accepting other fees or rewards.

An officer¹ of a local authority² is prohibited from accepting, under colour of his office or employment, any fee or reward whatsoever other than his proper remuneration³. Any person who contravenes this provision is liable on summary conviction to a fine⁴.

1 As to the meaning of 'officer' see PARA 425 note 3.

2 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

3 Local Government Act 1972 s 117(2). It seems clear that this prohibition, contained in the provision which also deals with disclosure of interests in contracts (see PARA 440), is aimed at accepting fees or rewards from any person or body other than the employing local authority. The proper remuneration of an officer is ordinarily regulated by the terms of his own engagement, which will have been the subject of a notice of terms and conditions of employment (as to which see PARA 437 note 6) and the terms of the current agreement in force by the joint negotiating committee or national joint council within whose ambit the officer falls for the purposes of

pay negotiations (see PARA 437). As to bribery and obstruction of public officers see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 527 et seq. See also the Local Government Act 2000 s 82(2); the Code of Conduct (Qualifying Local Government Employees) (Wales) Regulations 2001, SI 2001/2280, Schedule; and PARA 439.

4 Local Government Act 1972 s 117(3). The fine must not exceed level 4 on the standard scale: s 117(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7. As to prosecutions see PARA 440 note 8.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(2) CONDITIONS OF SERVICE/442. Accountability and personal liability of officers.

442. Accountability and personal liability of officers.

Every officer¹ employed² by a local authority³ must at such times during the continuance of his office or within three months after ceasing to hold it, and in such manner as the local authority directs, make out and deliver to the authority, or in accordance with its directions, a true written account of all money and property committed to his charge, and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each⁴. Every such officer must pay all money due from him to the proper officer⁵ of the local authority or in accordance with its directions⁶. An officer is protected from personal liability in respect of matters or things done by him in good faith for the purpose of executing any public general or local Act⁷.

1 As to the meaning of 'officer' see PARA 425 note 3.

2 Ie under the Local Government Act 1972 or any other enactment. As to the meaning of 'enactment' see PARA 12 note 1.

3 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

4 Local Government Act 1972 s 115(1).

5 As to the meaning of 'proper officer' see PARA 431.

6 Local Government Act 1972 s 115(2).

7 See the Public Health Act 1875 s 265 (amended by the Environment Act 1965 Sch 7 para 15(d); and the Audit Commission Act 1998 Sch 3 para 1); and the Local Government (Miscellaneous Provisions) Act 1976 s 39(1) (amended by the Local Government Finance Act 1982 Sch 6 Pt IV). See also PARA 227.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(3) STAFFING RESPONSIBILITIES/443. Duty to publish information.

(3) STAFFING RESPONSIBILITIES

443. Duty to publish information.

The Secretary of State or the Welsh Ministers may issue a code of recommended practice as to the publication of information by certain authorities¹ about the discharge of their functions and other matters (including forecasts) which he or they consider to be related². Authorities³ in Wales are required to publish staffing information⁴ in the manner and form and on the occasions specified⁵.

1 le a county council; a county borough council; a district council; a parish council; a parish meeting of a parish which does not have a separate parish council; a community council; a London borough council; the Common Council of the City of London; the Council of the Isles of Scilly; a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES**); a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see **PARA 47** et seq); an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) **PARA 621**); the London Fire and Emergency Planning Authority (see **LONDON GOVERNMENT** vol 29(2) (Reissue) **PARA 217**); and any other authority which is a best value authority for the purposes of the Local Government Act 1999 Pt I (see **PARA 688** et seq); Local Government Planning and Land Act 1980 s 2(1) (amended by the Local Government Act 1985 Sch 14 para 59, Sch 17; the Education Reform Act 1988 Sch 13 Pt 1; the Local Government (Wales) Act 1994 Sch 16 para 57(1); the Police and Magistrates' Courts Act 1994 Sch 4 para 19, Sch 9 Pt 1; the Local Government Act 1999 s 20; the Greater London Authority Act 1999 Sch 29 para 28; the Fire and Rescue Services Act 2004 Sch 1 para 49(1), (2); and the Local Government and Public Involvement in Health Act 2007 Sch 7 para 1, Sch 13 para 36(1), (2)). As from a day to be appointed the Local Government Planning and Land Act 1980 s 2(1) is amended by the Local Government (Wales) Measure 2009 Sch 1 paras 1, 2 to add a reference to any authority which is a Welsh improvement authority for the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-47) (see **PARA 711** et seq). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State and the Welsh Ministers see **PARAS 96-97**.

2 Local Government Planning and Land Act 1980 s 2(2). See also para 546 et seq.

3 See note 1.

4 le as specified in the Local Government (Publication of Staffing Information) (Wales) Code 1996, as set out in the Welsh Office Circular 29/96 Annex issued on 20 May 1996 by the Secretary of State for Wales: see the Local Government (Publication of Staffing Information) (Wales) Regulations 1996, SI 1996/1899, reg 2(2).

5 Local Government (Publication of Staffing Information) (Wales) Regulations 1996, SI 1996/1899, reg 2(1). At the date at which this volume states the law there was no similar provision in relation to England.

UPDATE

443 Duty to publish information

NOTE 1--Local Government, Planning and Land Act 1980 s 2(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 49.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(3) STAFFING RESPONSIBILITIES/444. Security for officers.

444. Security for officers.

A local authority¹ must in the case of any officer² employed by it³ who, by reason of his office or employment, is likely to be entrusted with the custody or control of money, and may in the case of any other officer employed by it, take such security for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him, as the local authority considers sufficient⁴. A local authority may, in the case of a person not employed by it but who is likely to be entrusted with the custody or control of money or property belonging to the local authority, take such security as it thinks sufficient for the person duly accounting for all such money or property⁵.

A local authority must defray the cost of any security so taken, and every such security must be produced to the auditor at the audit of the accounts of the local authority⁶.

1 As to the meaning of 'local authority' see **PARA 23**. See also **PARA 462** note 3.

2 As to the meaning of 'officer' see PARA 425 note 3.

3 le under the Local Government Act 1972 or any other enactment. As to the meaning of 'enactment' see PARA 12 note 1.

4 Local Government Act 1972 s 114(1).

5 Local Government Act 1972 s 114(2).

6 Local Government Act 1972 s 114(3). As to the audit of accounts see PARA 744 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(3) STAFFING RESPONSIBILITIES/445. Indemnification.

445. Indemnification.

Local authorities¹ may provide indemnities to some or all of their officers².

1 As to the meaning of 'local authorities' see PARA 23.

2 As to indemnification see PARA 228 et seq. As to the meaning of 'officers' see PARA 425 note 3.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/4. OFFICERS/(4) COMPENSATION AND PENSIONS, ETC/(i) Deceased or Mentally Incapacitated Officers/446. Remuneration of deceased officers.

(4) COMPENSATION AND PENSIONS, ETC

(i) Deceased or Mentally Incapacitated Officers

446. Remuneration of deceased officers.

Where on the death of an officer¹ or former officer of a local authority² there is due to him or to his legal personal representatives from the local authority a specified sum³, other than by way of pension, allowance or gratuity⁴, the authority may, without requiring the production of letters of administration or probate, pay the sum or part of it to the personal representatives or to the person or persons appearing to be beneficially entitled to the estate, who must account for any sum so paid⁵. The authority may, if it thinks fit, out of the sum so due pay all or a reasonable part of the funeral expenses⁶. The powers so described may be applied⁷ to pensions, allowances and gratuities⁸.

If a person in the employment of a local authority⁹ receives remuneration in respect of a future period on the assumption that he will be employed in that employment throughout that period¹⁰, and dies before the expiration of that period¹¹, the authority may, subject to certain stipulations¹², forego the repayment of so much of the remuneration as relates to the period after death¹³.

1 As to the meaning of 'officer' see PARA 425 note 3.

2 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

3 le a sum not exceeding £5000. The Local Government Act 1972 s 119(1), as originally enacted, specified a sum not exceeding £500 but, by virtue of s 119(3), this provision is included among the provisions with respect to which the Treasury may by order under the Administration of Estates (Small Payments) Act 1965 s 6(1) (see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 187), substitute a higher amount. As to the orders that have been made under s 6 see the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539.

4 le payable under the Superannuation Act 1972 s 7: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.

5 See the Local Government Act 1972 s 119(1) (amended by the Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539, art 2). See note 3.

6 Local Government Act 1972 s 119(2) (amended by the Social Security Act 1986 s 86, Sch 11).

7 le by regulations made by the Secretary of State or the Welsh Ministers: Local Government Act 1972 s 119(4). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

8 Local Government Act 1972 s 119(4).

9 For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 30, a member of a police force which is maintained by a police authority (other than the Secretary of State) is to be treated as employed by the authority and references to employment must be construed accordingly: Local Government (Miscellaneous Provisions) Act 1976 s 30(3) (substituted by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 17; and amended by the Criminal Justice and Police Act 2001 Sch 6 para 34, Sch 7 Pt 5(1)).

10 Local Government (Miscellaneous Provisions) Act 1976 s 30(1)(a).

11 Local Government (Miscellaneous Provisions) Act 1976 s 30(1)(b).

12 An authority may not forgo such repayment if (for the period in question) a pension is payable in respect of the deceased out of money provided by Parliament, or out of a fund which is maintained by the authority or into which contributions have been paid by the authority in respect of the deceased's service, and the rate of the pension is not less than the rate of relevant remuneration which was received by the deceased for his last year of service in the employment in question, or, if relevant remuneration at different rates was received by him for that year, is not less than the highest of those rates: Local Government (Miscellaneous Provisions) Act 1976 s 30(2).

'Relevant remuneration', in relation to a deceased person and a year, means remuneration to be taken into account for calculation of a retirement pension payable to him in respect of the employment in question on his attaining pensionable age and being granted a retirement pension: s 30(2).

13 Local Government (Miscellaneous Provisions) Act 1976 s 30(1).

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447. Mentally disordered employees, pensioners or dependants.

The power conferred on a local authority to make payments to an institution or person having care of an officer who was considered mentally disordered has been repealed¹ and matters of mental capacity, and the management of the affairs of those judged mentally incapable, are now dealt with under the Mental Capacity Act 2005². If, however, before 1 October 2007 a local authority had made payments as provided under the former power, it may continue to do so notwithstanding the repeal, and the following provisions apply³.

Where a person (the 'patient') was entitled, whether as an officer⁴ or pensioner⁵, or as the widow, widower or child of a deceased officer or pensioner, to receive money from a local authority as remuneration, pension, superannuation or other allowance, gratuity or annuity, or by way of repayment of contributions made to any superannuation or other fund⁶, and he was by reason of mental disorder⁷ incapable of managing and administering his own affairs, the

local authority may pay or apply the whole, or such part as it thinks fit, of the money to the institution or person having care of the patient to be applied for his benefit⁸. It may similarly pay or apply any part of any surplus: (1) to or for the benefit of the patient's family or other persons for whom he might be expected to provide if he were not mentally disordered⁹; or (2) in reimbursement, with or without interest, of money applied by any person in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or persons mentioned in head (1) above¹⁰.

1 le the Local Government Act 1972 s 118 (see the text and notes 2-10), which is repealed by the Mental Capacity Act 2005 s 67(1), Sch 6 para 18(1), Sch 7.

2 See **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641 et seq.

3 See the Mental Capacity Act 2005 s 67(1), Sch 6 para 18(2) and (3).

4 As to the meaning of 'officer' see PARA 425 note 3.

5 'Pensioner' includes a person entitled to any pecuniary benefit under any enactment or scheme for the establishment of a superannuation fund or a superannuation and provident fund administered by the local authority: Local Government Act 1972 s 118(2). As to the meaning of 'local authority' see PARA 23.

6 Local Government Act 1972 s 118(2). See also note 1.

7 le within the meaning of the Mental Health Act 1983 s 1: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402.

8 Local Government Act 1972 s 118(1) (amended by the Mental Health Act 1983 s 148, Sch 4 para 32). It was provided by the Local Government Act 1972 s 118(3) (as originally enacted) that the payment in any one year in respect of any one person must not exceed £500 or such other sum as may be prescribed. The maximum sum now prescribed is £1500: see the Local Government (Application of Salary due to Mentally Disordered Persons) (Limits) Regulations 1983, SI 1983/1402. Before exercising its powers in relation to any patient a local authority must give to the authority having jurisdiction under the Mental Health Act 1983 Pt VII (ss 93-113) (repealed) notice in writing of its intention so to do, specifying the name and address of the patient and the amount and nature of the sums in respect of which the local authority intends to exercise those powers, and the local authority must, at the same time, give notice in writing to the patient in a form approved by the authority having jurisdiction as aforesaid; and, except with the approval of the authority having jurisdiction as aforesaid, the local authority is not permitted to make the first payment under the Local Government Act 1972 s 118 in relation to that patient before the expiration of the period of 14 days beginning with the date of the service of the notice: s 118(4) (amended by the Mental Health Act 1983 Sch 4 para 32). If the authority having jurisdiction as aforesaid then objects by written notice to the exercise of those powers in relation to any patient they cease to be exercisable in respect of that person until the notice is withdrawn: Local Government Act 1972 s 118(5). A local authority is discharged from all liability in respect of any payment or application of money effected by it in exercise of its powers under s 118: s 118(6). See also note 1.

9 Local Government Act 1972 s 118(1)(a). See also notes 1, 8.

10 Local Government Act 1972 s 118(1)(b). See also notes 1, 8.

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(ii) Pensions, Redundancy and the Transfer of Undertakings

448. Power to make regulations for occupational pension schemes.

The Superannuation Act 1972¹ confers powers on the Secretary of State² to make regulations for certain occupational pension schemes applying to local government employees³. The current occupational pension scheme for local government employees (other than teachers⁴, policemen⁵ and firefighters⁶) is the Local Government Pension Scheme 2008⁷. The pensions of

local government employees were formerly governed by the Local Government Pension Scheme Regulations 1997⁸. Arrangements were made for the transfer of pensions from the previous scheme to the new scheme by the Local Government Pension Scheme (Transitional Provisions) Regulations 2008⁹. Any person who was an active or deferred member becomes a member of the new scheme and benefits accrued in the previous scheme are preserved¹⁰.

1 See the Superannuation Act 1972 s 7; and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 875.

2 As to the Secretary of State see PARA 96.

3 As to public service pension schemes see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 874 et seq. As to pensions generally see **SOCIAL SECURITY AND PENSIONS**.

4 As to pension schemes for teachers see the Teachers' Pension Regulations 1997, SI 1997/3001; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 867 et seq.

5 As to pension schemes for police officers see the Police Pensions Act 1976; the Police Pensions Regulations 1987, SI 1987/257; the Police Pensions Regulations 2006, SI 2006/3415; and **POLICE** vol 36(1) (2007 Reissue) PARA 407 et seq.

6 As to pension schemes for firefighters see the Fire and Rescue Services Act 2004; the Firemen's Pension Scheme Order 1992, SI 1992/129; the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432; and the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072; and **FIRE SERVICES** vol 18(2) (Reissue) PARA 45 et seq.

7 The Local Government Pension Scheme 2008 is contained in the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166 (which came into force on 1 April 2008: reg 1(3)); and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239 (which came into force on 1 April 2008: reg 1(1)). As to the interpretation of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, see reg 1; and as to the interpretation of the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, see reg 2, Sch 1. As to the application of the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, to the Isles of Scilly, see reg 3. See *Newham London Borough Council v Skingle* [2003] EWCA Civ 280, [2003] 2 All ER 761, [2003] ICR 1008 (under appellant's contract of employment, he had been contractually obliged to work overtime so those payments should have formed part of pensionable pay); and *R (on the application of Unison) v First Secretary of State* [2006] EWHC 2373 (Admin), [2007] LGR 188, [2006] IRLR 926 (abolition of 'rule of 85' which allowed scheme members to take early retirement and receive full benefits if the sum of their age and length of service was 85 years or more, not unlawful).

8 See the Local Government Pension Scheme Regulations 1997, SI 1997/1612 (amended by SI 1997/954; SI 1998/1129; SI 1998/1238; SI 1998/2118; SI 1999/1212; SI 1999/3428; SI 2000/1005; SI 2000/1164; SI 2000/1410; SI 2000/3025; SI 2001/770; SI 2001/1481; SI 2001/2866; SI 2001/3401; SI 2001/3649; SI 2002/206; SI 2003/1022 (modified by SI 2004/928); SI 2003/2249; SI 2003/3004; SI 2004/573; SI 2004/928; SI 2005/2004; SI 2005/3069; SI 2005/3199; SI 2006/966 (amended by SI 2006/2008); SI 2006/1011; SI 2006/2008; SI 2007/228; SI 2007/1488; SI 2007/1561; SI 2008/2425). Prior to the Local Government Pension Scheme Regulations 1997, SI 1997/1612, the pensions of local government employees were governed by the Local Government Superannuation Regulations 1974, SI 1974/520 (revoked), which were first consolidated in the Local Government Superannuation Regulations 1986, SI 1986/24 (revoked) and then in the Local Government Pension Scheme Regulations 1995, SI 1995/1019 (revoked).

9 See the Local Government Pension Scheme (Transitional Provisions) Regulations 2008, SI 2008/238 (amended by SI 2008/1083).

10 See the Local Government Pension Scheme (Transitional Provisions) Regulations 2008, SI 2008/238, regs 3-5. See also the Local Government Pension Scheme (Miscellaneous) Regulations 2008, SI 2008/2425, regs 2-10, which amend the Local Government Pension Scheme Regulations 1997, SI 1997/1612, with retrospective effect. 'Active member', in relation to an occupational pension scheme under the Local Government Pension Scheme 2007 means a person who is in pensionable service under the scheme: see the Pensions Act 1995 s 24(1).

449. Membership, contributions and benefits.

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007¹ and the Local Government Pension Scheme (Administration) Regulations 2008² make provision in relation to membership of the local government pension scheme³, contribution and benefits⁴. The provisions relating to benefits include those relating to final pay⁵, retirement benefits⁶, death grants⁷, survivor benefits⁸, children's pensions⁹ and commutation¹⁰.

1 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166. As to the local government pension scheme see PARA 448.

2 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239.

3 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 2, 6-7 (regs 2, 6 amended by SI 2008/1083); and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 2 (regs 4-17, Schs 2, 3) (reg 5 amended by SI 2008/2989; and reg 8A added and reg 12 amended by SI 2009/447).

4 See the Local Government Pension Scheme (Benefits, Membership and Contributions Regulations 2007, SI 2007/1166, regs 3, 5 (amended by 2008/1083); and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pts 3-5 (reg 18-53, Sch 4) (reg 31 amended by SI 2008/2425, regs 36A, 38A added by SI 2009/1025, reg 38 amended by SI 2008/2989, and Sch 4 amended by SI 2008/3245).

5 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 8-11 (reg 8 amended by SI 2007/1488, SI 2008/1083; reg 9 amended, and reg 10 substituted by SI 2008/1083).

6 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 16-22, 29-31, 38, 39, 41, 42 (regs 18, 20, 29-31, 35, 39 amended, and regs 41-42 added by SI 2008/1083, reg 40 revoked by SI 2009/1025).

7 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 23, 32, 35 (regs 23, 32 amended by SI 2008/2425).

8 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 24-26, 33, 36 (regs 25, 26, 36 amended by SI 2008/1083).

9 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 27-28, 34, 37.

10 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, reg 39.

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450. Optional benefits.

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007¹ and the Local Government Pension Scheme (Administration) Regulations 2008² include provisions relating to optional additional benefits, comprising provisions on the increase of membership by the employing authority³, the power of the employing authority to award additional pension⁴, the conversion between lump sums and pensions⁵, additional voluntary contributions and shared cost additional voluntary contributions⁶.

- 1 Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166. As to the local government pension scheme see PARA 448.
- 2 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239.
- 3 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, regs 40-41.
- 4 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, reg 13; and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, reg 40.
- 5 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, reg 21.
- 6 See the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, regs 14-15; and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, regs 25-28.

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451. Administration of the local government pension scheme.

The Local Government Pension Scheme (Administration) Regulations 2008¹ include provisions relating to pension funds and employers' payments², members' contributions³, the payment of benefits⁴, determination of questions and disputes⁵, policy statements and information⁶, special adjustments⁷ and transfers⁸.

- 1 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239. As to the local government pension scheme see PARA 448.
- 2 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 4 (regs 29-47, Sch 4) (reg 31 amended by SI 2008/2425, regs 36A, 38A added by SI 2009/1025, reg 38 amended by SI 2008/2989, and Sch 4 amended by SI 2008/3245).
- 3 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 3 (regs 18-28).
- 4 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 5 (regs 48-53).
- 5 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 6 (regs 54-63) (reg 56 substituted by SI 2008/1083).
- 6 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 7 (regs 64-69).
- 7 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 8 (regs 70-76).
- 8 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 9 (regs 77-87) (reg 83 amended by SI 2008/2425).

UPDATE

451 Administration of the local government pension scheme

NOTES--As to the management, investment and use of fund money, see the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009, SI 2009/3093.

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452. Modifications for certain employees.

The Local Government Pension Scheme (Administration) Regulations 2008¹ provide that certain types of employees, and certain people who are not employees, may be eligible for membership of the pension scheme².

1 Ie the Local Government Pension Scheme Regulations 2008, SI 2008/239. As to the local government pension scheme see PARA 448.

2 See the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, regs 8-10.

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453. Transfer of undertakings.

The Transfer of Undertakings (Protection of Employment) Regulations 2006¹, which comply with the Acquired Rights Directive², apply to public and private undertakings engaged in economic activities whether or not they are operating for gain, and to a transfer or service provision change³. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of the regulations⁴.

1 Ie the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246. See **EMPLOYMENT**. These regulations apply to a transfer of undertaking which takes place on or after 6 April 2006, and for transfers before this date the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/ 1794 (repealed) will apply: see the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 21(1), (2).

2 Ie EC Council Directive 2001/23 (OJ L82, 22.3.2001, p 16) on the approximation of the Laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses.

3 Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 3(4).

4 Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 3(5).

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454. Staff transfers and compensation for loss of office on reorganisation of local government.

As a result of local government reorganisation a number of authorities have ceased to exist or have been created¹. Provision has been made for the transfer of staff to the new local authorities and for the payment of compensation to staff who suffered a loss of employment or diminution of emoluments as a result of the reorganisation².

1 Eg under the Local Government Act 1972 (see PARAS 5-16); the Local Government Act 1985 (see PARA 17); the Local Government (Wales) Act 1994 (see PARA 18); or the Local Government and Public Involvement in Health Act 2007 (see PARA 21).

2 See eg the Local Government Act 1972 ss 255, 259 (PARA 7); the Local Government Act 1985 Pt VI (ss 52-54); the Local Government (Wales) Act 1994 Pt V (ss 39-45); the Local Government and Public Involvement in Health Act 2007 Sch 10; and the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Pt 9 (regs 77-87), Sch 4 Pt 2. See also *Walsh v Rother District Council* [1978] 1 All ER 510, 76 LGR 109 (affd [1978] 3 All ER 881, 77 LGR 111, CA); *Mallet v Restormel Borough Council* [1978] 2 All ER 1057, 77 LGR 1, CA; *Westminster City Council v Haywood* [1998] Ch 377, [1997] 2 All ER 84, CA.

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455. Power to increase statutory redundancy payments.

Local authority employers¹ have a discretionary power to pay compensation to a person² who is entitled to a redundancy payment under Part XI of the Employment Rights Act 1996³ on the termination of his employment⁴. The amount which may be paid must not be more than the difference between the redundancy payment to which he is entitled under Part XI of the Employment Rights Act 1996 and the payment to which he would have been entitled if there had been no limit⁵ on the amount of a week's pay used in the calculation of his redundancy payment⁶.

1 The power to pay compensation is exercisable by the employing authority: Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 5(3). An 'employing authority', in relation to a person, means a body listed in the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, Sch 2 (scheme employers) by whom he is employed immediately before the termination date: Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 2(1) (reg 2(1) also refers to (1) a body listed in the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, SI 2000/1410, reg 4(6) (revoked) by whom he is employed immediately before the termination date and which has passed a relevant resolution; or (2) in the case of a person who is eligible to be a scheme member under the Local Government Pension Scheme Regulations 1997, SI 1997/1612, reg 127(1) (revoked), the local education authority by whom he is deemed to be employed under reg 128 (revoked)).

2 The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, apply in relation to a person (1) whose employment is terminated by reason of redundancy, in the interests of the efficient exercise of the employing authority's functions, or in the case of a joint appointment, because the other holder of the appointment has left it; (2) who, on the termination date, is employed by an employing authority, and eligible to be a scheme member (whether or not he is such a member) or would be so eligible but for the giving of a notification under the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, reg 14; and (3) whose termination date is on or after 1 October 2006; and 'person' must be construed accordingly, unless the context indicates that it has a different meaning: Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 4(1). Where an additional requirement is specified in any provision

of regs 5, 6 (see PARA 456) in relation to a person, that provision does not apply in relation to him unless he satisfies that additional requirement: reg 4(2). 'Termination date' in relation to a person means the final day of his employment: reg 4(1).

3 le under the Employment Rights Act 1996 Pt XI (ss 135-181): see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq.

4 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 5(1).

5 See the Employment Rights Act 1996 s 227; and **EMPLOYMENT** vol 39 (2009) PARA 121.

6 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 5(2).

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456. Discretionary compensation for redundancy.

In certain circumstances¹, the employing authority may, not later than six months after the termination date², decide to pay compensation³, and in that event must, as soon as reasonably practicable after the decision, notify the person in whose favour it has been made, giving details of the calculation of the compensation⁴. The amount of compensation must not exceed 104 weeks' pay⁵.

1 The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6 applies where a person: (1) ceases to hold his employment with an employing authority; and (2) in respect of that cessation may not count an additional period of membership under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, SI 2007/1166, reg 12 (power of employing authority to increase total membership of active members): Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(1).

As to the meaning of 'employing authority' see PARA 455 note 1. As to the meaning of 'person' see PARA 455 note 2.

2 As to the meaning of 'termination date' see PARA 455 note 2.

3 Compensation must be paid by the employing authority as soon as practicable after this determination: Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(6). It is payable in the form of a lump sum: reg 6(7).

4 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(2). If the person in whose favour a determination under reg 6(2) has been made receives a redundancy payment under the Employment Rights Act 1996 Pt XI (ss 135-181) (see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq) or compensation under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 5 (see PARA 455), the equivalent amount must be deducted from the compensation otherwise payable to him under reg 6: reg 6(5).

5 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(4). The Employment Rights Act 1996 Pt XIV Ch II (ss 220-229) (calculation of a week's pay) (see **EMPLOYMENT** vol 39 (2009) PARA 118 et seq) applies for the purpose of calculating redundancy payments under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(3) as it applies for the purpose of calculating redundancy payments, but with the substitution for references to the calculation date of references to the termination date and without the limit on a week's pay imposed by Employment Rights Act 1996 s 227 (see **EMPLOYMENT** vol 39 (2009) PARA 121): Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 6(4).

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457. Policy statements.

Each employing authority¹ must formulate, publish and keep under review the policy that it applies in the exercise of its discretionary powers relating to the increase of statutory redundancy payments and discretionary compensation for redundancy². In formulating and reviewing its policies the authority must: (1) have regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service³; and (2) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs⁴.

If the authority decides to change its policy, it must publish a statement of the amended policy and may not give effect to any policy change until one month after the date of publication⁵.

1 As to the meaning of 'employing authority' see PARA 455 note 1.

2 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 7(1). The discretionary powers referred to in the text are those under regs 5 and 6: see also PARAS 455-456.

3 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 7(3)(a).

4 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 7(3)(b).

5 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 7(2). Local authorities have a broad discretion to depart from a stated policy where appropriate: *Chapman v South Holland District Council* [2006] EWHC 27 (Ch), [2006] LGR 437.

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458. Payments and repayments.

Any discretionary compensation payable¹ is payable to or in trust for the person² entitled to receive it³.

Where any compensation is paid in error to any person the employing authority⁴ must, as soon as possible after the discovery of the error inform the person concerned by notice in writing giving details of the relevant calculation⁵. Where there has been an underpayment, the employing authority must make a further payment⁶. Where there has been an overpayment, the employing authority must specify a reasonable period for repayment⁷.

1 ie payable under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914: see PARA 455 et seq.

2 As to the meaning of 'person' see PARA 455 note 2.

3 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 8(1).

4 As to the meaning of 'employing authority' see PARA 455 note 1.

5 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 8(2)(a)(i).

6 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 8(2)(a)(ii).

7 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 8(2)(a)(iii). A person who has received a notice under reg 8(2)(a) must repay any overpayment within the specified period: reg 8(2)(b). The employing authority may take such steps as it considers appropriate to recover from the person to whom it was paid any overpayment which has not been repaid within the specified period: reg 8(2)(c). However, the paying authority must take into account the person's circumstances (so far as known or reasonably ascertainable), before taking such steps: reg 8(3).

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459. Savings.

The revocation of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000¹ does not affect: (1) any person² whose termination date³ is before 1 October 2006, and who is eligible for compensation under the provisions of those regulations⁴; or (2) the rights of any person who is entitled to benefits under those regulations in consequence of the death of such a person⁵.

Provision under the 2000 regulations with regard to the discretionary power to award compensation is similar to that under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006⁶, but with additional provision regarding alternative discretionary awards for those aged 50 and over⁷, awards to surviving spouses and children⁸ and the effect of other receipts and new employment on awarded compensation⁹.

1 I.e. the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, SI 2000/1410. As to the revocation of those regulations see the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 11(1)(a).

2 As to the meaning of 'person' see PARA 455 note 2.

3 As to the meaning of 'termination date' see PARA 455 note 2.

4 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 11, Sch 2 para 1(a). Additionally, an employing authority may decide to pay compensation under those regulations to a person whose employment with them commenced before 1 October 2006, and whose termination date is after 30 September 2006 and before 1 April 2007: reg 11(2). As to the meaning of 'employing authority' see PARA 455 note 1.

5 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914, reg 11, Sch 2 para 1(b).

6 I.e. the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, SI 2006/2914: see PARA 455 et seq.

7 I.e. the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, SI 2000/1410, regs 7-11 (revoked).

8 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, SI 2000/1410, regs 20-25 (revoked).

9 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, SI 2000/1410, regs 12-19 (revoked).

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5. POWERS AND DUTIES OF LOCAL AUTHORITIES

(1) GENERAL POWERS AND STRATEGIC FUNCTIONS

(i) General Powers and Limitations

460. Local authorities as statutory bodies.

The local authorities¹ in England and Wales are, with few exceptions², corporations created by statute³, and as such they may do such things only as are expressly or impliedly authorised by statute⁴ or by subordinate legislation⁵. Local authorities are, however, generally authorised by statute to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions⁶. The ultra vires doctrine as it applies to statutory corporations is applied and enforced by the courts in relation to modern statutory local authorities⁷.

Local authorities may not disable themselves by deed, grant or contract from fulfilling their obligations to exercise their powers and duties for public purposes, and an agreement or undertaking which has or would have that effect is void⁸. Further, an estoppel⁹ may not be raised to prevent the exercise of a statutory discretion or to prevent or excuse the performance of a statutory duty¹⁰.

A local authority may in exercising its statutory powers be liable in civil law¹¹.

1 As to the meaning of 'local authority' see PARA 23.

2 Eg the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple: see PARAS 5, 35; and **LONDON GOVERNMENT**.

3 See PARA 22 et seq. The former status of boroughs, which derived from their creation (prior to the reorganisations under the London Government Act 1963 and the Local Government Act 1972) by virtue of charters granted under prerogative powers, terminated on 1 April 1974: see the Local Government Act 1972 s 1(10) (England), s 20(6) (as originally enacted) (Wales); and PARA 5. As to the exercise of the royal prerogative in relation to the creation of cities and boroughs see PARA 1 note 2.

4 *Ashbury Railway Carriage and Iron Co Ltd v Riche* (1875) LR 7 HL 653; *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473 at 481, HL, per Lord Blackburn; *Baroness Wenlock v River Dee Co* (1885) 10 App Cas 354 at 360-361, HL, per Lord Blackburn; *LCC v A-C* [1902] AC 165 at 167, HL, per Lord Halsbury LC; *A-G v Hastings Corp* (1902) 67 JP 165; *Batson v London School Board* (1903) 67 JP 457, 2 LGR 116; *A-G v Manchester Corp* [1906] 1 Ch 643, 4 LGR 365; *A-G v Leicester Corp* [1910] 2 Ch 359; *Kemp v Glasgow Corp* [1920] AC 836, HL; *A-G v Fulham Corp* [1921] 1 Ch 440, (1920) 19 LGR 441; *Prescott v Birmingham Corp* [1955] Ch 210, [1954] 3 All ER 698, CA. See also **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1231.

5 Many of the powers and duties of local authorities are now derived from statutory instruments and other delegated legislation, but they may also be affected by ministerial directions, guidance or circulars. See further PARA 98 et seq.

6 See the Local Government Act 1972 s 111(1); and PARA 462. Section 111(1) makes statutory provision for the common law rule established in eg *A-G v Leeds Corpn* [1929] 2 Ch 291, 27 LGR 351; *A-G v Smethwick Corpn* [1932] 1 Ch 562, 30 LGR 117, CA; *Grainger v Liverpool Corpn* [1954] 1 QB 351, [1954] 1 All ER 333, DC.

7 As to the ultra vires doctrine see PARA 461.

8 *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL; *York Corpn v Henry Leetham & Sons Ltd* [1924] 1 Ch 557, 22 LGR 371; *Birkdale District Electric Supply Co Ltd v Southport Corpn* [1926] AC 355, 24 LGR 157, HL; *Sunderland Corpn v Priestman* [1927] 2 Ch 107, 26 LGR 64; *Ransom and Luck Ltd v Surbiton Borough Council* [1949] Ch 180, [1949] 1 All ER 185, CA; *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL; *Blake (Valuation Officer) v Hendon Corpn* [1962] 1 QB 283, [1961] 3 All ER 601, CA; *Re Staines UDC's Agreement, Triggs v Staines UDC* [1969] 1 Ch 10, [1968] 2 All ER 1; *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65, [1970] 1 WLR 1281. See also **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1234.

9 As to the effect of estoppel see **ESTOPPEL** vol 16(2) (Reissue) PARA 1053.

10 *St Mary, Islington, Vestry v Hornsey UDC* [1900] 1 Ch 695, CA; *Sunderland Corpn v Priestman* [1927] 2 Ch 107, 26 LGR 64; *Stockwell v Southgate Corpn* [1936] 2 All ER 1343; *Re Local Government Superannuation Acts 1937 and 1939, Algar v Middlesex County Council* [1945] 2 All ER 243, sub nom *Algar v Middlesex County Council* (1945) 43 LGR 155, DC; *William Cory & Son Ltd v London Corpn* [1951] 2 KB 476, [1951] 2 All ER 85, CA. However, there may be circumstances in which an authority becomes bound by the acts of its delegates: *Battelley v Finsbury Borough Council* (1958) 122 JP 169, 56 LGR 165.

It has been said that there seem to be two exceptions to this rule as to estoppel, namely: (1) that where a planning authority delegated to its officers powers to determine specific questions, any decisions they then made could not be revoked (eg *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222, [1970] 3 All ER 496, CA); and (2) that where a planning authority waived a procedural requirement relating to an application made to it, it might be estopped from relying on lack of formality: see *Western Fish Products Ltd v Penwith District Council and the Secretary of State for the Environment* [1978] JPL 623 at 628, CA, per Megaw LJ.

11 See PARA 872 et seq.

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461. The doctrine of ultra vires.

The rules which require statutory corporations to act intra vires and which are applied by the courts to local authorities consist not only of the limitation of powers but extend also to matters concerning the manner of the exercise of a discretion or duty and the procedure adopted¹. The following matters are among the relevant considerations in deciding whether any action of a local authority² which is subject to challenge in the courts is lawful or is ultra vires:

- 392 (1) whether the action of the local authority is expressly or impliedly authorised³ or is within the general subsidiary powers⁴ of the authority⁵;
- 393 (2) whether the action challenged has been exercised in good faith⁶ and for the purposes for which the power was conferred⁷;
- 394 (3) whether the decision challenged was influenced to a significant extent by relevant considerations not being taken into account or by irrelevant considerations being taken into account⁸;
- 395 (4) whether the decision challenged was manifestly unreasonable in the sense that it could not have been reached by any reasonable body⁹;
- 396 (5) whether the decision challenged was accompanied by a failure to comply with mandatory procedural requirements or other mistake of law¹⁰;
- 397 (6) whether a discretion has been exercised or a duty executed¹¹;

- 398 (7) whether a discretion has been fettered by an improper application of general
rules for policy established by the local authority¹²;
- 399 (8) whether the action taken by an appropriate authority, committee or person
has been taken by an authority, committee or person with the powers for that
purpose lawfully entrusted and exercised, or whether a lawfully entrusted
authority, committee or person was correctly constituted when it decided the
matter¹³;
- 400 (9) whether, in exercising powers or duties of a semi-judicial or judicial
character¹⁴, a local authority (or its authorised committee, sub-committee or
officer¹⁵) followed procedure contrary to the rules of natural justice¹⁶.

1 As to the doctrine of ultra vires see **JUDICIAL REVIEW** vol 61 (2010) PARA 610 et seq; **CORPORATIONS** vol 9(2) (2006 Reissue) PARAS 1230-1231. As to restitutionary remedies for ultra vires demands by a public authority see **RESTITUTION** vol 40(1) (2007 Reissue) PARAS 58-61.

2 Although local authorities are generally statutory corporations, the Common Council of the City of London is a common law corporation created by charter (see PARA 460), and other arguments and considerations apply in relation to the limitation of its powers: see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1230. As to the Common Council of the City of London see PARA 35; and **LONDON GOVERNMENT**.

3 As to the extent of statutory powers see *A-G v Southampton Corpn* (1859) 24 JP 131; *A-G v Sunderland Corpn* (1876) 2 ChD 634, CA; *LCC v A-G* [1902] AC 165, 66 JP 340, HL; *A-G v Pontypridd UDC* [1906] 2 Ch 257, 4 LGR 791, CA; *A-G v Fulham Corpn* [1921] 1 Ch 440, 19 LGR 441. However, these cases were all decided before the enactment of the Local Government Act 1972 s 111 (see PARA 462).

4 I.e. the powers under the Local Government Act 1972 s 111: see PARA 462.

5 As to the presumption of legislative intent followed by the courts in interpreting statutes conferring powers see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 22.

6 See *Galloway v London Corpn* (1866) LR 1 HL 34; *Westminster Corpn v London and North Western Rly Co* [1905] AC 426, 3 LGR 1120, HL; *G Scammell & Nephew Ltd v Hurley* [1929] 1 KB 419, 27 LGR 53, CA; *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL.

In a case concerning the wartime enforcement of defence regulations, it was said that all that the court could do was to see that the power claimed to have been exercised was one which fell within the four corners of the powers given by the legislature and that those powers were exercised in good faith; apart from that, the court had no power to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction: see *Carltona Ltd v Works Comrs* [1943] 2 All ER 560 at 564, CA, per Lord Greene MR.

7 See *Hanson v Radcliffe UDC* [1922] 2 Ch 490, 20 LGR 541, CA; *Sadler v Sheffield Corpn* [1924] 1 Ch 483, 22 LGR 138; *Birmingham and Midland Motor Omnibus Co Ltd v Worcestershire County Council* [1967] 1 All ER 544 at 549, [1967] 1 WLR 409 at 417, CA; *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508, [1970] 1 All ER 734, HL, where the use of planning powers to restrict building operations was held to be valid in spite of alternative powers under the highways legislation, which required the payment of compensation. See also *Webb v Minister of Housing and Local Government* [1965] 2 All ER 193, [1965] 1 WLR 755, CA, where the land included in a compulsory purchase order under coast protection powers extended to certain land to be used for other purposes, and for this (and other) reasons the action of the local authority was held to be ultra vires. See also *Congreve v Home Office* [1976] QB 629, [1976] 1 All ER 697, CA; *Pickwell v Camden London Borough Council* [1983] QB 962, [1983] 1 All ER 602, DC.

8 The courts have been reluctant to set narrow limits to the exercise of wide discretionary powers vested in local authorities. In *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223 at 228, [1947] 2 All ER 680 at 682, CA, Lord Greene MR declared that when an executive decision is entrusted by Parliament to a body such as a local authority, what purports to be an exercise of that discretion may only be challenged in the courts in a strictly limited class of case; the law recognises certain principles on which the discretion must be exercised, but within those principles the discretion is absolute and cannot be questioned. The exercise of the discretion must be a real exercise of it. If the statute conferring the discretion expressly or impliedly indicates matters to which the authority ought to have regard, it must have regard to them; conversely, if the nature of the subject matter and the general interpretation of the Act makes it clear that certain matters would not be germane, the authority must disregard those irrelevant collateral matters.

See further *Kruse v Johnson* [1898] 2 QB 91, 62 JP 469, DC; *R v Brighton Corpn, ex p Thomas Tilling Ltd* (1916) 85 LKB 1552, DC; *Hanks v Minister of Housing and Local Government* [1963] 1 QB 999, [1963] 1 All ER 47; *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL; *R v Barnet and*

Camden Rent Tribunal, ex p Frey Investments Ltd [1972] 2 QB 342, [1972] 1 All ER 1185, CA; *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, [1976] 3 All ER 665, HL; *Eckersley v Secretary of State for the Environment* (1977) 76 LGR 245, CA; *R v Sheffield City Council, ex p Mansfield* [1978] JPL 465, DC; *Windsor Securities Ltd v Liverpool City Council* (1978) 77 LGR 502, 129 NLJ 117, CA; *Pickwell v Camden London Borough Council* [1983] QB 962, [1983] 1 All ER 602, DC.

9 See *Kruse v Johnson* [1898] 2 QB 91, 62 JP 469, DC; *Roberts v Hopwood* [1925] AC 578, 23 LGR 337, HL; *Roberts v Cunningham* (1925) 24 LGR 61, 134 LT 421, HL; *R v Roberts, ex p Woolwich Borough Council* (1927) 25 LGR 347, sub nom *Woolwich Corpn v Roberts* 96 LJB 757, HL; *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223, [1947] 2 All ER 680, CA; *Prescott v Birmingham Corpn* [1955] Ch 210, [1954] 3 All ER 698, CA; *Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA; *Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735, [1964] 2 All ER 627, HL; *Allnatt London Properties Ltd v Middlesex County Council* (1964) 62 LGR 304; *Backhouse v Lambeth London Borough Council* (1972) 116 Sol Jo 802.

Unreasonable conduct is conduct which no sensible authority with due appreciation of its responsibility would have decided to adopt: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1064, [1976] 3 All ER 665 at 695, HL, per Lord Diplock. In that case, at 1031 and 675, Lord Scarman said that whilst it was not for the court to substitute its view for that of the Secretary of State, it was also the law that the Secretary of State cannot substitute his view for that of the authority, provided always that an authority, acting reasonably, could have made the decision that in fact it made; and, at 1070 and 700, Lord Salmon quoted Lord Hailsham of St Marylebone LC in *Re W (an infant)* [1971] AC 682 at 700, [1971] 2 All ER 49 at 56, HL: 'Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting the title to be regarded as reasonable . . . Not every reasonable exercise of judgment is right and not every mistaken exercise of judgment is unreasonable'. In *Windsor Securities Ltd v Liverpool City Council* (1978) 77 LGR 502, 129 NLJ 117, CA, the court (following *Associated Provincial Picture Houses Ltd v Wednesbury Corpn*) held that a rating authority exercising a general statutory discretion (as to relieving rates on the ground of hardship) given in general terms must not act so unreasonably that no reasonable authority could have come to the decision to which it came, but pointed out that to prove such a case required something overwhelming. In most cases in which the argument of manifest unreasonableness arises it is almost inextricably tangled with arguments relating to the misuse of a power or relevant or irrelevant matters of consideration. See also *R v Hammersmith and Fulham London Borough Council, ex p Beddowes* [1987] QB 1050, [1987] 1 All ER 369, CA.

10 As to procedural impropriety as a ground of review see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 24 et seq. See also *Cullimore v Lyme Regis Corpn* [1962] 1 QB 718, [1961] 3 All ER 1008; *Chelmsford RDC v Powell* [1963] 1 All ER 150, [1963] 1 WLR 123, DC; *Webb v Minister of Housing and Local Government* [1965] 2 All ER 193, [1965] 1 WLR 755, CA; *R v Pontypool Game Licensing Committee, ex p Risca Cinemas Ltd* [1970] 3 All ER 241, [1970] 1 WLR 1299, DC. See further *R v Minister of Health, ex p Yaffé* [1930] 2 KB 98, 28 LGR 140, DC; on appeal sub nom *Minister of Health v R, ex p Yaffé* [1931] AC 494, sub nom *R v Minister of Health, ex p Yaffé* (1931) 29 LGR 305, HL.

11 See *R v St Pancras Vestry* (1890) 24 QBD 371, CA; *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL. See also **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 27-29.

12 However, general rules or principles of policy relevant to the exercise of the particular powers, and not being arbitrary or capricious, may be adopted, so long as the authority does not disable itself from exercising a general discretion to make an exception or otherwise to meet the circumstances of a particular case: *Cummings v Birkenhead Corpn* [1972] Ch 12, [1971] 2 All ER 881, CA; *Short v Poole Corpn* [1926] Ch 66, (1925) 24 LGR 14, CA. See also **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 32.

13 Most of the decisions on this aspect of the matter concern decisions by civil servants under powers delegated by ministers: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 31. In the light of the power of local authorities to delegate functions to officers (see the Local Government Act 1972 s 101(1); and PARA 370), certain of the decisions relating to civil servants appear to be relevant, particularly those concerning the extent of the delegated power and the extent of the power of the delegating authority to act concurrently with its delegate committee, sub-committee or officers. See *Huth v Clarke* (1890) 25 QBD 391; the Local Government Act 1972 s 101(4); and PARA 370. However, there may be circumstances in which the delegating authority may have become bound by the acts of its delegates: see *Battelle v Finsbury Borough Council* (1958) 56 LGR 165.

14 As to the circumstances in which a duty to act fairly arises see **JUDICIAL REVIEW** vol 61 (2010) PARA 630. The duty so to act may arise in relation to duties which are administrative in character: see *Ealing Borough Council v Minister of Housing and Local Government* [1952] Ch 856, [1952] 2 All ER 639; *Hoggard v Worsbrough UDC* [1962] 2 QB 93, [1962] 1 All ER 468; *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL; *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, [1969] 1 All ER 904, CA.

15 As to powers of delegation to such committees, sub-committees and officers see PARA 369 et seq.

16 The rules of natural justice referred to in the text are that no man is to be a judge in his own cause (*nemo iudex in causa sua*) and that no man is to be condemned unheard (*audi alteram partem*). These two principles are the most widely established rules of natural justice, but others have been suggested within the general principle that an authority exercising powers of a judicial nature must act fairly: see **JUDICIAL REVIEW** vol 61 (2010) PARA 630. As to the rules of natural justice see further **JUDICIAL REVIEW** vol 61 (2010) PARA 629 et seq. In the case of local authorities, the rules requiring councillors to declare their pecuniary interests in matters arising, and to take no part in the discussion or vote (see PARA 285 et seq) provide statutory application for one of the rules of natural justice but extend only to pecuniary interests. However, the code of conduct for members of local authorities is more wide-ranging: see PARA 232 et seq.

In *Windsor Securities Ltd v Liverpool City Council* (1978) 77 LGR 502, 129 NLJ 117, CA, the court held that a rating authority exercising a general statutory discretion as to relieving rates on grounds of hardship was not compelled to give the appellants an oral hearing or reasons for its decision.

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462. General subsidiary powers.

Without prejudice to any power otherwise exercisable¹, but subject to the provisions of the Local Government Act 1972 and any other enactment passed before or after that Act², a local authority³ has power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights⁴) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions⁵. However, a local authority may not, under this power, raise money (whether by means of rates⁶, precepts⁷ or borrowing) or lend money except in accordance with the enactments relating to those matters respectively⁸.

1 Ie any power exercisable apart from the Local Government Act 1972 s 111 (as to which see the text and notes 2-8).

2 Thus, in the exercise of these general subsidiary powers under the Local Government Act 1972 s 111, all the requirements and conditions of specific powers in the Local Government Act 1972 or other enactments must be observed. As to the meaning of 'enactment' see PARA 12 note 1. It seems that 'enactment' in s 111 is intended to include subordinate legislation.

3 For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 s 111(4). As to the meaning of 'local authority' generally see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. Subject to s 146A(1A) a joint authority, a joint waste authority, the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 and the Metropolitan Police Authority must each be treated as a local authority for the purposes of the Local Government Act 1972 ss 111-119, 128-131, 135, 136, 139 (except s 139(1)(b), (2)), 140, 140A, 140C, 143, 146 and as a principal council for the purposes of s 120 (except s 120(1)(b)) and ss 121-123: s 146A(1) (added by the Local Government Act 1985 Sch 14 para 16; and amended by the Education Reform Act 1988 Sch 12 para 43, the Police and Magistrates' Courts Act 1994 Sch 4 para 11(2), the Police Act 1996 Sch 7 para 1(2)(h), the Police Act 1997 Sch 6 para 6(2)(b), the Greater London Authority Act 1999 s 333, the Criminal Justice and Police Act 2001 Sch 6 para 28(a), the Local Government and Public Involvement in Health Act 2007 Sch 13 para 10). Neither a police authority established under the Police Act 1996 s 3 nor the Metropolitan Police Authority must be treated as a local authority for the purposes of the Local Government Act 1972 s 112 or s 139 or as a principal council for the purposes of s 122: s 146A(1A) (s 146A as so added; s 146A(1A) as added by the Police and Magistrates' Courts Act 1994 Sch 4 para 11(3); and amended by the Police Act 1996 Sch 7 para 1(2)(h), the Police Act 1997 Sch 6 para 6(3), the Greater London Authority Act 1999 Sch 27 para 28(3), the Criminal Justice and Police Act 2001 Sch 6 para 28(b), Sch 7, Pt 5(2)). As to the meaning of 'joint waste authority' see PARA 47 note 1.

4 As to local government finance see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq. As to land transactions see PARA 508 et seq.

5 Local Government Act 1972 s 111(1). Cf the power under the Local Government Act 2000 to do anything likely to promote or improve economic, social or environmental well-being: see PARA 463.

For the purposes of the Local Government Act 1972 s 111, transacting the business of a parish or community meeting or any other parish or community business is treated as a function of the parish or community council: s 111(2). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. Where it is a matter of debate whether an act facilitates the carrying on of the council's functions, the council is entitled to please itself: *R v GLC, ex p Burgess* [1978] ICR 991, 77 LGR 74, DC (closed shop agreement).

The Local Government Act 1972 s 111(1) makes statutory provision for the common law rule established in eg *A-G v Leeds Corp* [1929] 2 Ch 291, 27 LGR 351; *A-G v Smethwick Corp* [1932] 1 Ch 562, 30 LGR 117, CA; *Grainger v Liverpool Corp* [1954] 1 QB 351, [1954] 1 All ER 333, DC. See also PARA 408 note 6. As to the ambit of the Local Government Act 1972 s 111 see *Grubb v Pricewaterhouse Coopers* [2001] LGR 32, [2000] All ER (D) 1105 (payments to third parties); *R v Broadland District Council, ex p Lashley* [2001] EWCA Civ 179, [2001] LGR 264, [2001] All ER(D) 71 (Feb) (conduct and extent of the Local Government Act 1972 ss 101(1), 111(1)).

As to limitations on statutory powers see *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL (local authority has no power to enter into swap transactions); *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA (local authority has no power to establish a limited company as a means of raising funds, nor to guarantee a loan made to the company by a bank); *Crédit Suisse v Waltham Forest London Borough Council* [1997] QB 362, [1996] 4 All ER 176, CA (local authority has no power to discharge its housing functions by means of a partly owned company or to give such a company assistance in the form of a guarantee or indemnity); *Sutton London Borough Council v Morgan Grenfell & Co Ltd* (1996) 95 LGR 574, CA (local authority has no power to guarantee loans to, and indemnify against loss, unregistered housing associations); *McCarthy and Stone (Developments) v Richmond-upon-Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL (without express statutory authority, there is no power for a local authority to levy a charge for services it provides); *Allsop v North Tyneside Metropolitan Borough Council* [1992] ICR 639, (1991) 90 LGR 462, CA (no power under the Local Government Act 1972 s 111 to make redundancy payments in excess of those required to be made under employment law), distinguished in *Newbold v Leicester City Council* [2000] LGR 58, [1999] ICR 1182, CA (redeployment scheme providing lump sum payments to employees for loss of stand-by and call-out payments not so generous as to be irrational). See also *R v Westminster City Council, ex p Union of Managerial and Professional Officers* [2000] LGR 611 (granting of an indemnity to members or officers in respect of their legal costs could be said to facilitate, or be conducive or incidental to the discharge of functions); and *Akumah v Hackney London Borough Council* [2005] UKHL 17, [2005] 2 All ER 148, [2005] 1 WLR 985 (local authority entitled to introduce a parking permit scheme without passing any byelaws); and *R (on the application of Risk Management Partners Ltd) v Brent London Borough Council; Risk Management Partners Ltd v Brent London Borough Council* [2008] EWHC 692 (Admin), [2008] LGR 331 (entering into mutual insurance arrangements not a function). As to limitations on statutory powers see also PARA 461.

6 As to rates see **RATING AND COUNCIL TAX**.

7 As to precepts see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 524 et seq.

8 Local Government Act 1972 s 111(3).

UPDATE

462 General subsidiary powers

NOTE 3--Local Government Act 1972 s 146A(1) further amended, s 146(1ZA), (1ZB) added: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 21.

NOTE 5--*Risk Management*, cited, affirmed: [2009] EWCA Civ 490, [2010] LGR 99.

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(ii) The Power to Promote Well-being

463. Promotion of economic, social or environmental well-being.

Under the Local Government Act 2000, every local authority¹ has power to do anything which it considers is likely to achieve one or more of the following objects²: (1) the promotion or improvement of the economic well-being of its area³; (2) the promotion or improvement of the social well-being of its area⁴; and (3) the promotion or improvement of the environmental well-being of its area⁵. This power may be exercised in relation to, or for the benefit of, the whole or any part of a local authority's area, or all or any persons resident or present in a local authority's area⁶. In determining whether or how to exercise this power, a local authority must have regard to its strategy for promoting well-being⁷. Before exercising this power, a local authority must have regard to any guidance for the time being issued by the Secretary of State or the Welsh Ministers about the exercise of the power⁸.

1 As to the meaning of 'local authority' see PARA 23. For these purposes 'local authority' includes an eligible parish council: see the Local Government Act 2000 s 1(1)(a)(iv) (added by the Local Government and Public Involvement in Health Act 2007 s 77(1), (3)). A parish council is 'eligible' for these purposes if the council meets the conditions prescribed by the Secretary of State by order: Local Government Act 2000 s 1(2) (added by the Local Government and Public Involvement in Health Act 2007 s 77(1), (34)). Such conditions have been prescribed: see the Parish Councils (Power to Promote Well-being) (Prescribed Conditions) Order 2008, SI 2008/3095.

2 See the Local Government Act 2000 s 2(1).

The power under s 2(1) includes power for a local authority to: (1) incur expenditure; (2) give financial assistance to any person; (3) enter into arrangements or agreements with any person; (4) co-operate with, or facilitate or co-ordinate the activities of, any person; (5) exercise on behalf of any person any functions of that person; and (6) provide staff, goods, services or accommodation to any person: s 2(4). It also includes power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside its area if it considers that it is likely to achieve any one or more of the objectives in s 2(1): s 2(5). Nothing in s 2(4) or s 2(5) affects the generality of the power under s 2(1): s 2(6).

The power under s 2(1) does not enable a local authority to: (a) do anything which it is unable to do by virtue of any prohibition, restriction or limitation on its powers which is contained in any enactment, whenever passed or made (s 3(1)); (b) raise money, whether by precepts, borrowing or otherwise (s 3(2)). For these purposes, 'enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978: see **STATUTES** vol 44(1) (Reissue) PARA 1381): Local Government Act 2000 ss 3(8), 5(6). As to the raising of finance generally see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq. If the Secretary of State thinks that an enactment (whenever passed or made) prevents or obstructs local authorities from exercising their power under s 2(1), he may by order amend, repeal, revoke or disapply that enactment: s 5(1). As to the procedure to be followed where orders are made under s 5 see s 9; and PARA 480. As to the Secretary of State see PARA 96. The power under s 5(1) may be exercised in relation to: (i) all local authorities; (ii) particular local authorities; or (iii) particular descriptions of local authority: s 5(2). The power to amend or disapply an enactment includes a power to amend or disapply an enactment for a particular period: s 5(3). In exercising the power under s 5(1), the Secretary of State: (A) must not make any provision which has effect in relation to Wales unless he has consulted the Welsh Ministers; (B) must not make any provision amending, repealing or disapplying any Measure or Act of the National Assembly for Wales without the consent of the Assembly; and (C) must not make any provision amending, revoking or disapplying subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998) without the consent of the Welsh Ministers: s 5(4), (4A) (s 5(4) substituted, and s 5(4A), (4B) added by the Local Government and Public Involvement in Health Act 2007 s 115(1), (3)). Heads (B) and (C) above do not apply to the extent that the Secretary of State is making incidental or consequential provision: Local Government Act 2000 s 5(4B) (as so added). The Welsh Ministers may submit proposals to the Secretary of State that the power under s 5(1) should be exercised in relation to Wales in accordance with those proposals: s 5(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (4)). As to the Welsh Ministers see PARA 97. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

The Secretary of State, or, in relation to Wales, the Welsh Ministers, may by order make provision preventing all local authorities, particular local authorities, or particular descriptions of local authorities, from doing, by virtue of s 2(1), anything which is specified, or is of a description specified, in the order: s 3(3), (3A), (7) (s 3(3A) added by the Local Government Act 2003 S 100(3), Sch 3, paras 11, 12(1), (2); s 3(7) amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (2)). Before making such an order, the Secretary of State or the Welsh Ministers must consult such representatives of local government and such other persons (if any) as he or they consider appropriate: Local Government Act 2000 s 3(4), (7) (s 3(4) amended by the Local Government Act 2003 Sch 3 para 12(3); s 3(7) as so amended). However, the requirement to consult does not apply to an order under the Local Government Act 2000 s 3 which is made only for the purpose of amending an earlier order under s 3 so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or so that the earlier order, or any provision of

the earlier order, ceases to apply to a particular authority or to authorities of a particular description: s 3(4A) (added by Local Government Act 2003 Sch 3 para 12(4)).

See *R (on the application of J) v Enfield London Borough Council* [2002] EWHC 432 (Admin), [2002] HLR 694 (power extended to grant of financial assistance to enable overstayer and child to acquire accommodation); applied in *R (on the application of Theophilus) v Lewisham London Borough Council* [2002] EWHC 1371 (Admin), [2002] 3 All ER 851, [2003] LGR 98 (grant of student support). See also *R (on the application of Khan) v Oxfordshire City Council* [2004] EWCA Civ 309, [2004] HLR 706 (power did not extend to provision of housing to person excluded from benefits by virtue of Immigration and Asylum Act 1999 s 115 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 257)).

3 Local Government Act 2000 s 2(1)(a).

4 Local Government Act 2000 s 2(1)(b).

5 Local Government Act 2000 s 2(1)(c).

6 Local Government Act 2000 s 2(2). See also s 2(5); and note 2.

7 Local Government Act 2000 s 2(3). As to community strategies see PARA 464. In the case of and eligible parish council the duty to prepare a community council is subject to s 4A (see PARA 464): s 2(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 78(1), (2)).

As from a day to be appointed the Local Government Act 2000 s 2(3) is amended, and a new s 2(3A) is added by the Local Government (Wales) Measure 2009 Sch 2 paras 1, 2 so that the requirement that a local authority have regard to its strategy for promoting well-being applies to local authorities in England only, while local authorities in Wales must have regard to the community strategy published under the Local Government (Wales) Measure 2009 s 39(4) (see PARA 394), or s 41(6) (see PARA 395). At the date at which this volume states the law no such day had been appointed. These amendments do not apply to a local authority until it has published a community strategy under the Local Government (Wales) Measure 2009 s 39(4) (see PARA 394): Sch 3 paras 1, 2.

8 Local Government Act 2000 s 3(5), (7) (s 3(7) as amended: see note 2). Before issuing any guidance under s 3(5), the Secretary of State or the Welsh Ministers must consult such representatives of local government and such other persons (if any) as he or they consider appropriate: s 3(6), (7) (s 3(7) as so amended). See also note 2.

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464. Strategy for promoting well-being.

Every local authority¹ must prepare a strategy (in England 'a sustainable community strategy', and in Wales a 'community strategy'²) for promoting or improving the economic, social and environmental well-being of its area³ and contributing to the achievement of sustainable development in the United Kingdom⁴. A local authority may from time to time modify its strategy⁵. In preparing or modifying its strategy, a local authority must⁶:

- 401 (1) consult and seek the participation of: (a) in the case of a responsible local authority⁷ each partner authority⁸ and such other persons as the responsible local authority considers appropriate⁹; and (b) in any other case such persons as it considers appropriate¹⁰; and
- 402 (2) must have regard to any guidance for the time being issued by the Secretary of State or the Welsh Ministers¹¹.

1 As to the meaning of 'local authority' see PARAS 23, and 463 note 1.

2 See the Local Government Act 2000 s 4(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (2); and the Sustainable Communities Act 2007 s 7(1), (3); and prospectively repealed by the Local Authority (Wales) Measure 2009 Sch 2 paras 1, 3(b), Sch 3).

3 As to the power to promote economic, social or environmental well-being see PARA 463.

4 Local Government Act 2000 s 4(1) (amended by the Sustainable Communities Act 2007 s 7(1), (2)(a)). As to the sustainability of local communities see PARA 465 et seq. As to the meaning of 'United Kingdom' see PARA 116 note 18.

For orders in force made under the Local Government Act 2000 s 6, see the Community Care Plans (Disapplication) (England) Order 2003, SI 2003/1716; and Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157 (amended by SI 2009/714). At the date at which this volume states the law no orders had been made under the Local Government Act 2000 s 7. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

The duty to prepare a community strategy does not apply to an eligible parish council: s 4A(1) (s 4A added by the Local Government and Public Involvement in Health Act 2007 s 78(1), (3)). However in exercising the power under the Local Government Act 2000 s 2(1) (see PARA 463), an eligible parish council must have regard to any community strategy prepared by a relevant principal council: s 4A(2) (as so added). For these purposes 'relevant principal council', in relation to a parish council, means any county council, district council or London borough council whose area the parish lies within: s 4A(3) (as so added). As to council areas see PARA 24 et seq. As to parish councils see PARA 27 et seq.

As from a day to be appointed the Local Government Act 2000 s 4(1) is amended by the Local Government (Wales) Measure 2009 Sch 2 paras 1, 3 so that the requirement that a local authority prepare a strategy for promoting well-being applies to local authorities in England only. At the date at which this volume states the law no such day had been appointed. For transitional provisions see Sch 3 paras 8, 9.

5 Local Government Act 2000 s 4(2) (amended by the Sustainable Communities Act 2007 s 7(1), (2)(a)).

6 Local Government Act 2000 s 4(3) (amended by the Sustainable Communities Act 2007 s 7(1), (2)(a)).

7 As to the meaning of 'responsible local authority' see PARA 387 note 2; definition applied by the Local Government Act 2000 s 4(6) (added by the Local Government and Public Involvement in Health Act 2007 s 114(1), (3)).

8 As to the meaning of 'partner authority' see PARA 387 note 6; definition applied by the Local Government Act 2000 s 4(6) (as added: see note 7).

9 Local Government Act 2000 s 4(3)(a)(i) (s 4(3)(a)(i), (ii) added by the Local Government and Public Involvement in Health Act 2007 s 114(1), (2)).

10 Local Government Act 2000 s 4(3)(a)(ii) (as added: see note 9). As to the proposals for local strategic partnerships see PARA 387 et seq.

11 Local Government Act 2000 s 4(3)(b), (5) (s 4(5) as amended; and prospectively repealed: see note 2). Before issuing any guidance under s 4, the Secretary of State or the Welsh Ministers must consult such representatives of local government and such other persons (if any) as he or they consider appropriate: s 4(4), (5) (s 4(5) as so amended; and prospectively repealed).

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465. Proposals by local authorities.

The Secretary of State¹ must invite local authorities to make proposals which they consider would contribute to promoting the sustainability of local communities². Before making such a proposal, the Secretary of State must have regard to the following matters³:

- 403 (1) the provision of local services⁴;

- 404 (2) the extent to which the volume and value of goods and services that are (a)
offered for sale; or (b) procured by public bodies⁵ and are produced within 30 miles
(or any lesser distance as may be specified by a local authority in respect of its
area) of their place of sale or of the boundary of the public body⁶;
- 405 (3) the rate of increase in the growth and marketing of organic forms of food
production and the local food economy⁷;
- 406 (4) measures to promote reasonable access by all local people to a supply of
food that is adequate in terms of both amount and nutritional value⁸;
- 407 (5) the number of local jobs⁹;
- 408 (6) measures to conserve energy and increase the quantity of energy supplies
which are produced from sustainable sources within a 30 mile radius of the region
in which they are consumed¹⁰;
- 409 (7) measures taken to reduce the level of road traffic including, but not restricted
to, local public transport provision, measures to promote walking and cycling and
measures to decrease the amount of product miles¹¹;
- 410 (8) the increase in social inclusion, including an increase in involvement in local
democracy¹²;
- 411 (9) measures to increase mutual aid and other community projects¹³;
- 412 (10) measures designed to decrease emissions of greenhouse gases¹⁴;
- 413 (11) measures designed to increase community health and well-being¹⁵;
- 414 (12) planning policies which would assist with these purposes¹⁶, including new
arrangements for the provision of affordable housing¹⁷; and
- 415 (13) measures to increase the use of local waste materials for the benefit of the
community¹⁸.

1 It is the duty of the Secretary of State to assist local authorities in promoting the sustainability of local communities in the ways specified in the Sustainable Communities Act 2007: s 1(4). The principal aim of that Act is to promote the sustainability of local communities: s 1(1). References to promoting the sustainability of local communities, in relation to a local authority, are references to encouraging the improvement of the economic, social or environmental well-being of the authority's area, or part of its area: s 1(2). 'Social well-being' includes participation in civic and political activity: s 1(3). For these purposes 'local authority' means a county council in England, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly: s 8. As to the Secretary of State see PARA 96. As to local authority areas generally see PARA 24 et seq. As to the Council of the Isles of Scilly see PARA 36.

There must be paid out of money provided by Parliament any sums to be paid by the Secretary of State for or in connection with the carrying out of his functions under the Sustainable Communities Act 2007, and any increase attributable to the Sustainable Communities Act 2007 in the sums which are payable out of money so provided under any other Act: Sustainable Communities Act 2007 s 9.

2 Sustainable Communities Act 2007 s 2(1). Without prejudice to the generality of s 2(1), such a proposal may include a request for a transfer of functions from one person to another: s 2(2). A local authority may not include such a request unless it has consulted: (1) the person whose functions it relates to; and (2) the person to whom the local authority considers the functions should be transferred: s 2(3).

3 Sustainable Communities Act 2007 s 2(4). The Secretary of State must issue the first invitation under the above provisions within the period of one year beginning with 23 October 2007 (the date of Royal Assent): s 2(5).

4 Sustainable Communities Act 2007 Schedule para 1(a). For these purposes 'local services' includes, but is not restricted to, retail outlets, public houses, banks, health facilities, including hospitals and pharmacies, legal services, social housing, post offices, schools, public eating places, leisure facilities and open spaces: Schedule para 2.

5 As to procurement by public bodies see PARA 418.

6 Sustainable Communities Act 2007 Schedule para 1(b).

7 Sustainable Communities Act 2007 Schedule para 1(c). For these purposes 'local food economy' means a system of producing, processing and trading primarily organic forms of food production, where the activity is largely contained in the area or region where the food was produced: Schedule para 2.

8 Sustainable Communities Act 2007 Schedule para 1(d).

9 Sustainable Communities Act 2007 Schedule para 1(e). For these purposes 'local jobs' mean (1) jobs in companies or organisations that in the opinion of the appropriate authority will spend a significant proportion of their turnover in the locality of the place of operation; and (2) jobs which are held by people living within 30 miles of that job: Schedule para 2.

10 Sustainable Communities Act 2007 Schedule para 1(f). 'Region' means a region specified in the Regional Development Agencies Act 1998 Sch 1 (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq): Sustainable Communities Act 2007 s 8.

11 Sustainable Communities Act 2007 Schedule para 1(g). For these purposes 'product miles' means the total distance produce is transported from the place of growth or production to the place of consumption: Schedule para 2.

12 Sustainable Communities Act 2007 Schedule para 1(g). For these purposes 'social inclusion' means the opportunity for all people resident in any area to play an equal role in the economic, social and civic life of the area; and 'local democracy' means the ability to participate, by means of voting at elections or otherwise, in decision-making that is as local as practicable to people's place of residence: Schedule para 2.

13 Sustainable Communities Act 2007 Schedule para 1(h). For these purposes 'mutual aid' means actions or initiatives by people in the community to improve services or provisions for themselves and other persons in the community: Schedule para 2.

14 Sustainable Communities Act 2007 Schedule para 1(i).

15 Sustainable Communities Act 2007 Schedule para 1(j). For these purposes 'community health and well-being' means the degree to which persons resident in an area identify with that area and receive an increased quality of life as a result of the nature and the environment of the area: Schedule para 2.

16 In the purposes of the Sustainable Communities Act 2007: see note 1.

17 Sustainable Communities Act 2007 Schedule para 1(k).

18 Sustainable Communities Act 2007 Schedule para 1(l).

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466. Decision on short-list and action plans.

Before inviting proposals¹, the Secretary of State² must appoint a person (the 'selector') to consider the proposals and, in co-operation with the Secretary of State, draw up a short-list of proposals³. The selector must be a person who represents the interests of local authorities⁴. On receiving the short-list from the selector, the Secretary of State must first consult the selector and try to reach agreement⁵, and then decide which of the proposals on the short-list should be implemented⁶.

The Secretary of State must publish such a decision⁷ and the reasons for it⁸. With the decision, the Secretary of State must also publish a statement of the action he proposes to take with a view to the implementation of any proposal⁹ (an 'action plan'¹⁰). Except in relation to an action plan if that plan has been implemented¹¹, the Secretary of State must publish and lay before Parliament a report, describing the progress which has been made in relation to any action plan, within the period of one year following the publication of the action plan and at intervals of not more than one year thereafter¹².

1 In the purposes of the Sustainable Communities Act 2007 s 2: see PARA 465.

- 2 As to the Secretary of State see PARA 96.
- 3 Sustainable Communities Act 2007 s 3(1). The proposals must be drawn up in accordance with regulations under s 5: see PARA 467.
- 4 Sustainable Communities Act 2007 s 3(2). As to the meaning of 'local authority' for these purposes see PARA 465 note 1.
- 5 See the Sustainable Communities Act 2007 s 3(4).
- 6 See the Sustainable Communities Act 2007 s 3(3).
- 7 ie a decision under the Sustainable Communities Act 2007 s 3(3): see the text to note 6.
- 8 Sustainable Communities Act 2007 s 4(1)(a).
- 9 Sustainable Communities Act 2007 s 4(1)(b).
- 10 See the Sustainable Communities Act 2007 s 4(2).
- 11 See the Sustainable Communities Act 2007 s 4(4).
- 12 See the Sustainable Communities Act 2007 s 4(3).

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467. Proposals: regulations.

The Secretary of State¹ must make regulations about the procedure to be followed in relation to proposals². Before making regulations the Secretary of State must consult the selector³, and such other persons who represent the interests of local authorities⁴ as the Secretary of State thinks fit⁵.

Regulations may, in particular:

- 416 (1) specify, or authorise the selector to specify, steps to be taken by a local authority before making proposals⁶;
- 417 (2) specify steps to be taken by the selector in considering the proposals and drawing up a short-list⁷;
- 418 (3) require the selector to prepare, and give to the Secretary of State, a report on the proposals⁸.

Regulations must:

- 419 (a) require a local authority, before making any proposal⁹, to establish or recognise a panel¹⁰ of representatives¹¹ of local persons¹² and consult it about the proposal¹³;
- 420 (b) require a local authority to try to reach agreement about proposals with the panel or any other persons consulted on the matter¹⁴; and
- 421 (c) require a local authority to have regard to any relevant guidance¹⁵.

The Secretary of State must issue guidance to local authorities about making proposals, which must include guidance about the inclusion among representatives of local persons (for the purposes of head (a) above) of persons from under-represented groups¹⁶. Such guidance may

include other guidance about establishing and consulting a panel of representatives of local persons¹⁷. Before issuing or revising such guidance the Secretary of State must consult local authorities, or persons who represent the interests of local authorities¹⁸.

1 As to the Secretary of State see PARA 96.

2 Sustainable Communities Act 2007 s 5(1). The proposals referred to in the text are those made under the Sustainable Communities Act 2007 s 2: see PARA 465.

As to the regulations which have been made under s 2 see the Sustainable Communities Regulations 2008, SI 2008/2694.

3 Sustainable Communities Act 2007 s 5(2)(a). As to the 'selector' see PARA 466.

4 As to the meaning of 'local authority' for these purposes see PARA 465 note 1.

5 Sustainable Communities Act 2007 s 5(2)(b). For the purposes of s 5(2) or (6) (see the text and note 18) any consultation undertaken before the 23 October 2007 (the date of Royal Assent) is as effective as it would have been if undertaken after that day: s 5(7).

6 Sustainable Communities Act 2007 s 5(3)(a).

7 Sustainable Communities Act 2007 s 5(3)(b). As to short-lists see PARA 466.

8 Sustainable Communities Act 2007 s 5(3)(c). Such a report must include a list of the proposals that the selector has rejected, and a statement of the reasons for both selection and rejection: see the Sustainable Communities Regulations 2008, SI 2008/2694, reg 6(1). The selector must send the report to the secretary of state at the same time as the short-list: see reg 6(2).

9 le under the Sustainable Communities Act 2007 s 2: see PARA 465.

10 'Panel' means a panel constituted in accordance with regulations: Sustainable Communities Act 2007 s 5(8).

11 'Representative' means, in relation to local persons, a person who appears to the local authority to be representative of the local persons: Sustainable Communities Act 2007 s 5(8).

12 'Local person' means, in relation to a proposal by a local authority under s 2, a person who is likely to be affected by, or interested in, the proposal: s 5(8).

13 Sustainable Communities Act 2007 s 5(4)(a). See the Sustainable Communities Regulations 2008, SI 2008/2694, reg 4(1), (3)(a), (b).

A panel established or recognised by a local authority under reg 4(3)(a) must involve sufficient representatives so that, in the opinion of the authority, local persons are adequately represented by the panel: reg 5(1), (2). However, where a local authority takes reasonable steps to involve a group of local persons in a panel, but no representatives of that group become so involved, then there is no breach of this regulation merely because of the lack of involvement of the group: reg 5(3), (4).

14 Sustainable Communities Act 2007 s 5(4)(b). See the Sustainable Communities Regulations 2008, SI 2008/2694, reg 4(1), (3)(c).

15 Sustainable Communities Act 2007 s 5(4)(c). See the Sustainable Communities Regulations 2008, SI 2008/2694, reg 4(1), (2).

16 Sustainable Communities Act 2007 s 5(5)(a). 'Under-represented groups' means those groups of local persons who in the opinion of a local authority are under-represented in civic and political activity in the authority's area: Sustainable Communities Regulations 2008, SI 2008/2694, reg 3; Sustainable Communities Act 2007 s 5(8).

17 Sustainable Communities Act 2007 s 5(5)(b).

18 Sustainable Communities Act 2007 s 5(6). See also note 5.

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468. Local spending reports.

For the purpose of assisting in promoting the sustainability of local communities, the Secretary of State¹ must make arrangements for the production, by the Secretary of State or another person, of local spending reports². A local spending report is a report on expenditure by such authorities³, in such area⁴, and over such period⁵, as are determined in accordance with the arrangements⁶. The expenditure to be included in relation to any authority, area or period is to be determined in accordance with the arrangements⁷. A report may relate to different areas or periods for different authorities⁸. The Secretary of State may make different arrangements for different reports⁹. Before making arrangements under these provisions, the Secretary of State must consult such persons likely to be affected by the arrangements as the Secretary of State thinks appropriate¹⁰.

1 As to the Secretary of State see PARA 96.

2 Sustainable Communities Act 2007 s 6(1). The Secretary of State must make the first arrangements under these provisions within the period of 18 months beginning with 23 October 2007 (the date of Royal Assent): s 6(9).

3 The authorities may be: (1) a local authority; (2) a government department; (3) any other person exercising public functions: Sustainable Communities Act 2007 s 6(3). As to the meaning of 'local authority' for these purposes see PARA 465 note 1.

4 The area must be: (1) one or more local authority areas; (2) one or more parts of a local authority area; or (3) any combination of those: Sustainable Communities Act 2007 s 6(4).

5 The period may be or include a future period: Sustainable Communities Act 2007 s 6(5).

6 Sustainable Communities Act 2007 s 6(2).

7 Sustainable Communities Act 2007 s 6(6).

8 Sustainable Communities Act 2007 s 6(7).

9 Sustainable Communities Act 2007 s 6(8).

10 Sustainable Communities Act 2007 s 6(10). For the purposes of s 6(10) any consultation undertaken before 23 October 2007 (the date of Royal Assent) is as effective as it would have been if undertaken after that day: s 6(11).

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(iii) Local Polls

469. Local polls.

A local authority¹ may conduct a poll to ascertain the views of those polled about any matter relating to services provided in pursuance of the authority's functions², or the authority's expenditure on such services³, or any other matter if it is one relating to the authority's power to promote well-being of its area⁴. It will be for the local authority concerned to decide who is to

be polled⁵, and how the poll is to be conducted⁶. In conducting such a poll⁷, a local authority must have regard to any guidance issued by the appropriate person on facilitating participation in a poll under these provisions by such of those polled as are disabled people⁸.

The above provisions are without prejudice to any powers of a local authority exercisable otherwise than by virtue of the above provisions⁹.

1 For these purposes 'local authority' means: (1) in relation to England: (a) a county council; (b) a district council; (c) a London borough council; (d) the Greater London Authority; (e) the Common Council of the City of London in its capacity as a local authority; (f) the Council of the Isles of Scilly; and (2) in relation to Wales, a county council or a county borough council: Local Government Act 2003 s 116(5). As to local authority areas see PARA 24 et seq. As to the Greater London Authority see **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36.

2 Local Government Act 2003 s 116(1)(a)(i).

3 Local Government Act 2003 s 116(1)(a)(ii).

4 Local Government Act 2003 s 116(1)(b). The authority's power to promote well-being is that under the Local Government Act 2000 s 2: see PARA 463.

5 Local Government Act 2003 s 116(2)(a).

6 Local Government Act 2003 s 116(2)(b).

7 ie under the Local Government Act 2003 s 116.

8 Local Government Act 2003 s 116(3).

9 Local Government Act 2003 s 116(4).

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(iv) Co-ordination of Regulatory Enforcement

470. Primary authorities.

Provisions relating to the co-ordination of regulatory enforcement¹ apply to a person who is carrying on an activity in the area of two or more local authorities (the 'regulated person')² and each of those authorities has the same relevant function³ in relation to that activity⁴.

The Local Better Regulation Office ('LBRO')⁵ may nominate a local authority to be the primary authority for the exercise of the relevant function in relation to the regulated person⁶. However LBRO may only nominate a local authority in relation to the regulated person if:

- 422 (1) the authority and the regulated person have agreed in writing to the nomination⁷; or
- 423 (2) the regulated person has requested LBRO to make such a nomination for the exercise of the relevant function in relation to the regulated person⁸,

and LBRO considers the authority suitable for nomination⁹.

LBRO may in particular consider as suitable for nomination:

- 424 (a) the local authority in whose area the regulated person principally carries out the activity in relation to which the relevant function is exercised¹⁰;
- 425 (b) the local authority in whose area the regulated person administers the carrying out of that activity¹¹.

LBRO must maintain, or cause to be maintained, a register of nominations¹².

1 le the Regulatory Enforcement and Sanctions Act 2008 Pt 2 (ss 22-35).

2 See the Regulatory Enforcement and Sanctions Act 2008 s 22(1)(a), (2). As to the meaning of 'local authority' see PARA 23.

3 As to the meaning of 'relevant function' see PARA 733 note 3 (definition applied by the Regulatory Enforcement and Sanctions Act 2008 s 24(1)(a)).

4 See the Regulatory Enforcement and Sanctions Act 2008 s 22(1)(b).

5 As to the establishment of LBRO see PARA 732.

6 Regulatory Enforcement and Sanctions Act 2008 s 25(1). Sections 27-32 apply in any case where a primary authority is nominated under s 25 in relation to the regulated person: s 25(2). LBRO may at any time revoke a nomination if it considers that the authority is no longer suitable for nomination or it considers it appropriate to do so for any other reason and s 26(2)-(4) apply in relation to a revocation of a nomination as in relation to a nomination: s 26(5). The primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under Pt 2 (ss 22-35) in relation to the regulated person: s 31. LBRO may do anything it considers appropriate for the purpose of supporting the primary authority in the exercise of the authority's functions under Pt 2 including making grants to the authority: s 32. As to guidance from LBRO in relation to the charging of fees under s 31 see PARA 478.

7 Regulatory Enforcement and Sanctions Act 2008 s 26(1)(a).

8 Regulatory Enforcement and Sanctions Act 2008 s 26(1)(b). Before nominating a local authority under s 25(1) in the case referred to in s 26(1)(b) LBRO must consult that authority and the regulated person: s 26(3). LBRO must have particular regard to any representations made by a local authority pursuant to s 26(3) as to the resources available to it: s 26(4).

9 Regulatory Enforcement and Sanctions Act 2008 s 26(1).

10 Regulatory Enforcement and Sanctions Act 2008 s 26(2)(a).

11 Regulatory Enforcement and Sanctions Act 2008 s 26(2)(b).

12 Regulatory Enforcement and Sanctions Act 2008 s 26(6).

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471. Advice and guidance given by the primary authority.

The primary authority¹ has the function of:

- 426 (1) giving advice and guidance to the regulated person² in relation to the relevant function³;
- 427 (2) giving advice and guidance to other local authorities with the relevant function as to how they should exercise it in relation to the regulated person⁴.

The primary authority may make arrangements with the regulated person as to how it will discharge the above function⁵.

1 As to the primary authority see PARA 470.

2 As to the meaning of 'regulated person' see PARA 470.

3 Regulatory Enforcement and Sanctions Act 2008 s 27(1)(a). As to the meaning of 'relevant function' see PARA 733 note 3 (definition applied by s 24(1)(a)).

4 Regulatory Enforcement and Sanctions Act 2008 s 27(1)(b).

5 Regulatory Enforcement and Sanctions Act 2008 s 27(2). As to guidance from the Local Better Regulation Office in relation to s 27(2) see PARA 478.

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472. Enforcement action.

A local authority¹ other than the primary authority² (the 'enforcing authority') must notify the primary authority before taking any enforcement action³ against the regulated person⁴ pursuant to the relevant function⁵. If the primary authority determines within the relevant period⁶ that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority⁷ (generally or specifically) it may within that period direct the enforcing authority not to take the enforcement action⁸. The enforcing authority may not take the proposed enforcement action at any time during the relevant period or at any time after the end of that period if it has been directed as specified under these provisions⁹. If the enforcing authority is not directed as specified under these provisions and continues to propose to take the enforcement action, it must inform the regulated person¹⁰.

The Secretary of State must by order, with the consent of the Welsh Ministers, prescribe circumstances in which the above provisions¹¹ do not apply¹².

1 As to the meaning of 'local authority' see PARA 23.

2 As to the primary authority see PARA 470.

3 For the purposes of the Regulatory Enforcement and Sanctions Act 2008 Pt 2 (ss 22-35) 'enforcement action' means, subject to s 28(6):

729 (1) any action which relates to securing compliance with any restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition (s 28(5)(a));

730 (2) any action taken with a view to or in connection with the imposition of any sanction (criminal or otherwise) in respect of an act or omission (s 28(5)(b));

731 (3) any action taken with a view to or in connection with the pursuit of any remedy conferred by an enactment in respect of an act or omission (s 28(5)(c)).

The Secretary of State may by order with the consent of the Welsh Ministers specify action which is or is not to be regarded as enforcement action for the purposes of Pt 2: s 28(6). As to actions to be regarded as enforcement actions for the purpose of Pt 2 see the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, SI 2009/665, art 2.

As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 As to the meaning of 'regulated person' see PARA 470.

5 Regulatory Enforcement and Sanctions Act 2008 s 28(1). As to the meaning of 'relevant function' see PARA 733 note 3 (definition applied by s 24(1)(a)).

6 For this purpose 'relevant period' means the period of five working days beginning with the day after that on which the primary authority is notified under the Regulatory Enforcement and Sanctions Act 2008 s 28(1) or such longer period beginning with that day as the Local Better Regulation Office ('LBRO') may direct: s 28(9). 'Working day' means a day other than a Saturday or Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the primary authority is or (if different) the part of the United Kingdom where the enforcing authority is: s 28(10).

7 As to advice and guidance by the primary authority see PARA 471.

8 Regulatory Enforcement and Sanctions Act 2008 s 28(2). The primary authority may refer the proposed enforcement action to LBRO: see PARAS 474-476.

9 Regulatory Enforcement and Sanctions Act 2008 s 28(4).

10 Regulatory Enforcement and Sanctions Act 2008 s 28(3). Where an enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which the authority is prohibited under s 28 or Sch 4 from taking the action is to be disregarded in calculating that period: s 28(8).

11 Ie the Regulatory Enforcement and Sanctions Act 2008 s 28(1)-(4).

12 Regulatory Enforcement and Sanctions Act 2008 s 29(1). Where a local authority other than the primary authority takes enforcement action against the regulated person in circumstances prescribed under s 29(1), the authority must inform the primary authority of the enforcement action it has taken as soon as it reasonably can: s 29(2). The Secretary of State must in particular under s 29(1) prescribe circumstances for the purpose of securing that s 28(1)-(4) does not apply:

732 (1) where the enforcement action is required urgently to avoid a significant risk of serious harm to human health or the environment (including the health of animals or plants) or the financial interests of consumers (s 29(3)(a));

733 (2) where the application of s 28(1)-(4) would be wholly disproportionate (s 29(3)(b)).

As to prescribed circumstances where s 28(1)-(4) does not apply see the Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, SI 2009/665, art 3.

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473. Referral to the Local Better Regulation Office.

Under certain circumstances the primary authority¹ may refer a proposed enforcement action² to the Local Better Regulation Office ('LBRO')³. The enforcing authority⁴ may not take the proposed enforcement action at any time after the making of the reference and before its determination⁵.

Before making a determination LBRO must consult any relevant regulator⁶, where appropriate, and may consult such other persons as it thinks fit⁷.

LBRO may require the primary authority, the enforcing authority or the regulated person to provide it with such information as it may specify, being information which the authority may lawfully provide to LBRO⁸.

1 As to the primary authority see PARA 470.

- 2 le as specified in the Regulatory Enforcement and Sanctions Act 2008 s 28(2) (see PARA 472).
- 3 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 paras 1-3; and PARAS 474-476. As to the establishment of LBRO see PARA 732.
- 4 As to the enforcing authority see PARA 472.
- 5 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 4(b).
- 6 For this purposes 'relevant regulator' means a person (other than a local authority) with regulatory functions which relate to the matter to which the determination relates: Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 5(2).
- 7 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 5(1). LBRO must determine any reference under Sch 4 within the period of 28 days beginning with the day on which the reference is made: Sch 4 para 6(1). The Secretary of State may by order make further provision as to the procedure to be followed, for the purposes of Sch 4, by the primary authority, the enforcing authority, the regulated person and LBRO: Sch 4 para 6(2). As to the procedure governing the reference of matters for determination by LBRO see the Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009, SI 2009/670.
- 8 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 8.

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474. Referral to the Local Better Regulation Office by enforcing authority.

If the primary authority¹ directs the enforcing authority² not to take the enforcement action³, the enforcing authority may with the consent of the Local Better Regulation Office ('LBRO')⁴ refer the proposed enforcement action to LBRO⁵. LBRO must confirm the direction if it is satisfied that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), the advice or guidance was correct and the advice or guidance was properly given by the primary authority⁶. In any other case, it must revoke the direction⁷.

Where LBRO confirms a direction of the primary authority, it may direct the enforcing authority to take some other enforcement action⁸.

- 1 As to the primary authority see PARA 470.
- 2 As to the enforcing authority see PARA 472.
- 3 le as specified in the Regulatory Enforcement and Sanctions Act 2008 s 28(2) (see PARA 472). If the primary authority does not direct the enforcing authority under s 28(2) it may still refer the matter to LBRO: see PARA 475.
- 4 As to the establishment of LBRO see PARA 732.
- 5 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 1(1).
- 6 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 1(2)(a), (3).
- 7 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 1(2)(b). Accordingly s 28(4)(b) ceases to apply in relation to the direction: Sch 4 para 1(2)(b). As to advice and guidance given by the primary authority see PARA 471.
- 8 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 8.

8 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 1(4). Section 28(1)-(4) does not apply in relation to that action: Sch 4 para 1(4). The enforcing authority must comply with any direction under Sch 4 para 1(4): Sch 4 para 1(5).

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475. Referral to the Local Better Regulation Office by regulated person.

If the primary authority¹ does not direct the enforcing authority² not to take the enforcement action³, the regulated person⁴ may with the consent of the Local Better Regulation Office ('LBRO')⁵ refer the action to LBRO⁶. If LBRO is satisfied that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), the advice or guidance was correct and the advice or guidance was properly given by the primary authority, it must direct the enforcing authority not to take the proposed enforcement action⁷. In any other case, LBRO must consent to the action⁸.

Where LBRO gives a direction⁹ it may direct the enforcing authority to take some other enforcement action¹⁰.

1 As to the primary authority see PARA 470.

2 As to the enforcing authority see PARA 472.

3 Ie as specified in the Regulatory Enforcement and Sanctions Act 2008 s 28(2) (see PARA 472).

4 As to the meaning of 'regulated person' see PARA 470. LBRO may require a regulated person who makes a reference under the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(7) to pay such reasonable costs incurred by LBRO as a result of the reference as LBRO may specify: Sch 4 para 2(7).

5 As to the establishment of LBRO see PARA 732.

6 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(1). The enforcing authority may not take the proposed action in any period during which the regulating person may make a reference under Sch 4 para 2: Sch 4 para 4(a).

7 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(2)(a), (3). The enforcing authority may not take the proposed enforcement action if it is directed as specified in Sch 4 para 2(2)(a): Sch 4 para 2(4). As to advice and guidance given by the primary authority see PARA 471.

8 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(2)(b).

9 Ie under the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(2)(a).

10 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 2(5). Section 28(1)-(4) does not apply in relation to that action: Sch 4 para 2(5). The enforcing authority must comply with any direction under Sch 4 para 2(5): Sch 4 para 2(6).

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476. Referral to the Local Better Regulation Office by primary authority.

The primary authority¹ may with the consent of the Local Better Regulation Office ('LBRO')², instead of making a determination in relation to a proposed enforcement action³, refer the action to LBRO⁴. If LBRO is satisfied that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), the advice or guidance was correct and the advice or guidance was properly given by the primary authority, it must direct the enforcing authority not to take the proposed enforcement action⁵. In any other case, LBRO must consent to the action⁶.

Where LBRO gives a direction⁷, it may direct the enforcing authority to take some other enforcement action⁸.

1 As to the primary authority see PARA 470.

2 As to the establishment of LBRO see PARA 732.

3 I.e. a determination under the Regulatory Enforcement and Sanctions Act 2008 s 28(2) (see PARA 472).

4 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 3(1).

5 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 3(2)(a), (3). The enforcing authority may not take the proposed enforcement action if it is directed as specified in Sch 4 para 3(2)(a): Sch 4 para 3(4). As to advice and guidance given by the primary authority see PARA 471.

6 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 3(2)(b).

7 I.e. under the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 3(2)(a).

8 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 3(5). Section 28(1)-(4) does not apply in relation to that action: Sch 4 para 3(5). The enforcing authority must comply with any direction under Sch 4 para 3(5): Sch 4 para 3(6).

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477. Inspection plans.

Where a relevant function¹ consists of or includes a function of inspection, the primary authority² may in accordance with the following provisions make an inspection plan containing recommendations as to how a local authority with the function of inspection should exercise it in relation to the regulated person³. An inspection plan may in particular set out:

- 428 (1) the frequency at which, or circumstances in which, inspections should be carried out⁴;
- 429 (2) what an inspection should consist of⁵.

Before making an inspection plan the primary authority must consult the regulated person⁶. When making an inspection plan the primary authority must take into account any relevant recommendations relating to inspections which are published by any person (other than a local authority) pursuant to a regulatory function⁷.

Where a primary authority has made an inspection plan it must, if the Local Better Regulation Office ('LBRO')⁸ consents to the plan, bring the plan to the notice of the other local authorities with the function of inspection⁹. A local authority (including the primary authority) exercising

the function of inspection in relation to the regulated person must have regard to a plan to which such consent has been given¹⁰.

Before a local authority other than the primary authority exercises the function of inspection in relation to the regulated person otherwise than in accordance with a plan to which consent has been so given, it must notify the primary authority¹¹.

1 As to the meaning of 'relevant function' see PARA 733 note 3 (definition applied by the Regulatory Enforcement and Sanctions Act 2008 s 24(1)(a)).

2 As to the primary authority see PARA 470.

3 Regulatory Enforcement and Sanctions Act 2008 s 30(1), (2). As to the meaning of 'regulated person' see PARA 470. A primary authority may from time to time revise a plan made by it under s 30 (and s 30(3)-(9) applies in relation to any revision of the plan): s 30(10).

4 Regulatory Enforcement and Sanctions Act 2008 s 30(3)(a).

5 Regulatory Enforcement and Sanctions Act 2008 s 30(3)(b).

6 Regulatory Enforcement and Sanctions Act 2008 s 30(4).

7 Regulatory Enforcement and Sanctions Act 2008 s 30(5).

8 As to the establishment of LBRO see PARA 732.

9 Regulatory Enforcement and Sanctions Act 2008 s 30(6). As to guidance by the LBRO in relation to inspection plans under s 30(6) see PARA 478.

10 Regulatory Enforcement and Sanctions Act 2008 s 30(7).

11 Regulatory Enforcement and Sanctions Act 2008 s 30(8). A notification under s 30(8) must include reasons for exercising the function otherwise than in accordance with the plan: s 30(9).

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478. Local Better Regulation Office guidance.

The Local Better Regulation Office ('LBRO')¹ may give guidance to any one or more local authorities² about the operation of Part 2³ of the Regulatory Enforcement and Sanctions Act 2008⁴ and a local authority must have regard to any such guidance given to it⁵. Before giving such guidance LBRO must consult such persons as it considers appropriate⁶.

LBRO may also give guidance or directions to any one or more local authorities about any enforcement action referred to it⁷ and a local authority must have regard to any such guidance and comply with any such direction⁸.

LBRO must publish (in such manner as it considers appropriate) any guidance or directions given by it under the above provisions⁹.

1 As to the establishment of LBRO see PARA 732. As to LBRO's function to provide guidance see PARA 734.

2 As to the meaning of 'local authority' see PARA 23.

3 ie the Regulatory Enforcement and Sanctions Act 2008 ss 22-35.

4 Regulatory Enforcement and Sanctions Act 2008 s 33(1). The guidance may include, in particular, guidance to local authorities about:

734 (1) arrangements under s 27(2) (see PARA 471) (s 33(2)(a));

735 (2) notification of inspection plans under s 30(6) (see PARA 477) (s 33(2)(b));

736 (3) the charging of fees under s 31 (see PARA 470) (s 33(2)(c)).

LBRO may not give guidance under s 33(2)(c) without the consent of the Secretary of State and without having consulted the Welsh Ministers: s 33(5). LBRO may at any time vary or revoke any guidance given under s 33 by further guidance under s 33: s 33(7).

5 Regulatory Enforcement and Sanctions Act 2008 s 33(3).

6 Regulatory Enforcement and Sanctions Act 2008 s 33(4).

7 Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 7(1).

8 See the Regulatory Enforcement and Sanctions Act 2008 Sch 4 para 7(2).

9 See the Regulatory Enforcement and Sanctions Act 2008 s 33(6), Sch 4 para 7(3).

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(v) Strategic Functions

479. In general.

Local authorities have strategic functions in so far as they are obliged to produce a number of plans or strategies relating to various specific activities, for example:

- 430 (1) spatial planning¹;
- 431 (2) best value²;
- 432 (3) housing³;
- 433 (4) energy conservation⁴;
- 434 (5) crime and disorder⁵;
- 435 (6) community care⁶;
- 436 (7) education and children's services⁷;
- 437 (8) transport, roads and highways⁸; and
- 438 (9) sustainable communities⁹.

They also have various functions and responsibilities related to financial planning¹⁰.

1 See PARA 481.

2 See PARA 482.

3 See PARA 483.

4 See PARA 484.

5 See PARA 485.

6 See PARA 486.

- 7 See PARA 487.
- 8 See PARA 488.
- 9 See PARA 489.
- 10 See **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

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480. Power to modify enactments.

The Secretary of State¹ or the Welsh Ministers² may by order amend, repeal, revoke or disapply any enactment³ (whenever passed or made) which requires a local authority to prepare, produce or publish any plan or strategy relating to any particular matter so far as that enactment has effect in relation to a local authority in England⁴, or Wales⁵ as appropriate⁶.

This power may be exercised in relation to a local authority only if the Secretary of State or the Welsh Ministers consider that it is not appropriate for any such enactment to apply to the authority⁷, or that any such enactment should be amended so that it operates more effectively in relation to the authority⁸.

Before the Secretary of State or the Welsh Ministers make an order under the provisions above he or they must consult: (1) such local authorities; (2) such representatives of local government; and (3) such other persons (if any), as appear to him or them to be likely to be affected by his or their proposals⁹. In the case of an order to be made by the Secretary of State, where those proposals affect any local authorities in Wales, the Secretary of State must also consult the Welsh Ministers¹⁰. If, following such consultation, the Secretary of State or the Welsh Ministers propose to make an order he or they must lay before the appropriate legislative body¹¹ a document which (a) explains his or their proposals; (b) sets them out in the form of a draft order; and (c) gives details of any consultation¹². Where the Secretary of State has consulted with the Welsh Ministers, such a document must also set out their views¹³. Further provision is made with regard to the laying of a document before the appropriate legislative body¹⁴, the preparation of a draft order¹⁵, and amending orders¹⁶.

1 As to the Secretary of State see PARA 96.

2 As to the Welsh Ministers see PARA 97.

3 For these purposes 'enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978: see **STATUTES** vol 44(1) (Reissue) PARA 1381): Local Government Act 2000 ss 6(8), 7(7).

4 The Secretary of State's power under the Local Government Act 2000 s 6(1) may be exercised in relation to: (1) all local authorities in England; (2) particular local authorities in England; or (3) particular descriptions of local authority in England: s 6(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (5)(b), (c)).

5 The Welsh Ministers' power under the Local Government Act 2000 s 7(1) may be exercised in relation to: (1) all local authorities in Wales; (2) particular local authorities in Wales; or (3) particular descriptions of local authority in Wales: s 7(3).

6 See the Local Government Act 2000 ss 6(1), 7(1) (s 6(1) amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (5)(a); s 7(1) amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (6)(a)). The power to amend or disapply an enactment includes a

power to amend or disapply an enactment for a particular period: ss 6(4), 7(5). For procedural matters see ss 6(7), 7(8)-(11) (s 7(8)-(11) added by the Local Government and Public Involvement in Health Act 2007 s 115(1), (7)). At the date at which this volume states the law the following orders had been made under the Local Government Act 2000 s 6(1) in relation to England: Community Care Plans (Disapplication) (England) Order 2003, SI 2003/1716; Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157 (amended by SI 2009/714). At the date at which this volume states the law no order had been made under the Local Government Act 2000 s 7(1) in relation to Wales.

7 Local Government Act 2000 ss 6(3)(a), 7(4)(a) (s 7(4) amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (6)(c)).

8 Local Government Act 2000 ss 6(3)(b), 7(4)(b) (s 7(4) as amended: see note 7).

9 See the Local Government Act 2000 ss 9(1), 9A(1) (s 9A added by the Local Government and Public Involvement in Health Act 2007 s 115(1), (9)). All of the references to bodies or persons in heads (1)-(3) in the text are to bodies and persons in Wales in relation to an order to be made by the Welsh Ministers: see s 9A(1) (as so amended).

10 Local Government Act 2000 s 9(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (8)(a)).

11 In each House of Parliament in the case of the Secretary of State and the National Assembly for Wales in the case of the Welsh Ministers.

12 Local Government Act 2000 ss 9(3)(a)-(c), 9A(2) (s 9A as added: see note 9).

13 See the Local Government Act 2000 s 9(3)(d) (amended by the Local Government and Public Involvement in Health Act 2007 s 115(1), (8)(b)).

14 See the Local Government Act 2000 ss 9(4)-(5), 9A(3)-(4) (s 9A as added: see note 9).

15 See the Local Government Act 2000 ss 9(6)-(7), 9A(5)-(6) (s 9A as added: see note 9).

16 See the Local Government Act 2000 ss 9(8), 9A(7) (s 9(8) added by the Local Government Act 2003 s 100(3), Sch 3 paras 11, 13; s 9A as added (see note 9)).

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481. Spatial planning.

Local authorities, in their role as local planning authorities¹, other than county councils in England, must prepare a local development framework comprising a folder of documents for delivering the spatial planning strategy for the area²; this includes a local development scheme³, local development documents⁴ and a statement of community involvement⁵. In addition regard must be had to the Regional Spatial Strategy⁶ and the Wales Spatial Plan⁷.

¹ See the Town and Country Planning Act 1990 s 1; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28.

² See **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 96 et seq. Local planning authorities in Wales must prepare a local development plan: see the Planning and Compulsory Purchase Act 2004 s 60; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 135 et seq.

³ As to local development schemes see the Planning and Compulsory Purchase Act 2004 s 15; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 96 et seq.

⁴ As to local development documents see the Planning and Compulsory Purchase Act 2004 s 17; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 101 et seq.

5 As to the statement of community involvement see the Planning and Compulsory Purchase Act 2004 s 18; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 103.

6 As to the Regional Spatial Strategy see the Planning and Compulsory Purchase Act 2004 s 1; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 72 et seq.

7 As to the Wales Spatial Plan see the Planning and Compulsory Purchase Act 2004 s 60; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 87-88.

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482. Best value.

A best value authority¹ has a general duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness².

1 As to best value authorities see PARA 688.

2 See the Local Government Act 1999 s 3; and PARA 689.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(1) GENERAL POWERS AND STRATEGIC FUNCTIONS/(v) Strategic Functions/483. Housing.

483. Housing.

Local housing authorities¹ have a number of duties with regard to the formulation of strategy². Every local housing authority has, for example, a duty to carry out and publish a homelessness review³, and the Secretary of State or the Welsh Ministers may require a local housing authority to have a strategy in respect of any housing related matters as may be specified⁴.

1 As to the meaning of 'local housing authority' see **HOUSING** vol 22 (2006 Reissue) PARA 9.

2 See **HOUSING**.

3 See the Homelessness Act 2002 s 1; and **HOUSING** vol 22 (2006 Reissue) PARA 277.

4 See the Local Government Act 2003 s 87; and **HOUSING** vol 22 (2006 Reissue) PARA 132.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(1) GENERAL POWERS AND STRATEGIC FUNCTIONS/(v) Strategic Functions/484. Energy conservation.

484. Energy conservation.

Energy conservation authorities¹ have a duty to produce an energy conservation report, setting out the energy conservation measures which are considered practical, cost effective and likely

to result in significant improvements in the energy efficiency of residential accommodation in their area².

1 As to the meaning of 'energy conservation authority' see **HOUSING** vol 22 (2006 Reissue) PARAS 9, 681 note 2.

2 See the Home Energy Conservation Act 1995; and **HOUSING** vol 22 (2006 Reissue) PARA 681 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(1) GENERAL POWERS AND STRATEGIC FUNCTIONS/(v) Strategic Functions/485. Crime and disorder.

485. Crime and disorder.

The responsible authorities for a local government area must formulate and implement a strategy for the reduction of crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment), and a strategy for combating the misuse of drugs, alcohol and other substances in the area¹.

Every local authority in England² must ensure that it has a crime and disorder committee with power³:

- 439 (1) to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities⁴ of their crime and disorder functions⁵;
- 440 (2) to make reports or recommendations to the local authority with respect to the discharge of those functions⁶.

A local authority must:

- 441 (a) ensure that its crime and disorder committee has power⁷ to make a report or recommendations to the local authority with respect to any matter which is a local crime and disorder matter in relation to a member of the authority⁸; and
- 442 (b) make arrangements which enable any member of the authority who is not a member of the crime and disorder committee to refer any local crime and disorder matter to the committee⁹.

Where a local crime and disorder matter is referred to a crime and disorder committee by a member of a local authority in accordance with such arrangements the following provisions apply¹⁰:

- 443 (i) in considering whether or not to make a report or recommendations to the local authority in relation to the matter, the committee may have regard to any powers which the member may exercise in relation to the matter by virtue of the exercise of functions by local councillors in England¹¹, and any representations made by the member as to why it would be appropriate for the committee to exercise any power which it has to make a report or recommendations¹² in relation to the matter¹³;
- 444 (ii) if the committee decides not to make a report or recommendations to the local authority in relation to the matter, it must notify the member of its decision, and the reasons for it¹⁴.

Where the crime and disorder committee of a local authority makes a report or recommendations to the authority¹⁵ or provides a copy of a report or recommendations¹⁶ the crime and disorder committee must notify the authority, body or person to whom it makes the report or recommendations or provides the copy that that authority, body or person must consider the report or recommendations, respond to the committee indicating what (if any) action it proposes to take, and have regard to the report or recommendations in exercising its functions¹⁷.

In the case of a local authority in England operating executive arrangements¹⁸ the crime and disorder committee is to be an overview and scrutiny committee of the authority¹⁹ and a reference to making a report or recommendations to the local authority is to be read as a reference to making a report or recommendations to the local authority or the executive²⁰.

The Secretary of State²¹ may issue guidance with regard to the exercise of function relating to crime and disorder committees²², and may make supplementary provision by regulations²³.

1 See the Crime and Disorder Act 1998 s 6; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 reissue) PARA 855. Without prejudice to any other obligation imposed on them, relevant authorities are also obliged to exercise their various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that they reasonably can to prevent, crime and disorder in their area (including anti-social and other behaviour adversely affecting the local environment), and the misuse of drugs, alcohol and other substances in its area: see the Crime and Disorder Act 1998 s 17; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 reissue) PARA 855. In addition a local housing authority must prepare a policy in relation to anti-social behaviour, and procedures for dealing with occurrences of such behaviour: see the Housing Act 1996 s 218A; and **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1340.

2 At the date at which this volume states the law the Police and Justice Act 2006 ss 19, 20 (as amended by the Local Government and Public Involvement in Health Act 2007 s 126) had been brought into force in relation to England (see the Police and Justice Act 2006 (Commencement No 1) (England) Order 2009, SI 2009/936) and not yet in relation to Wales. For these purposes 'local authority' means in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly, and in relation to Wales, a county or county borough council: Police and Justice Act 2006 s 19(11). As to areas and authorities in England see PARA 24 et seq. As to local government in London see PARA 35. As to the Council of the Isles of Scilly see PARA 36.

3 Police and Justice Act 2006 s 19(1). Further provision is made with regard to the powers and procedures relating to crime and disorder committees: see the Police and Justice Act 2006 s 19(10), Sch 8.

4 'Responsible authorities' means the bodies and persons who are responsible authorities within the meaning given the Crime and Disorder Act 1998 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 reissue) PARA 855) in relation to the local authority's area: Police and Justice Act 2006 s 19(1). See note 2.

5 Police and Justice Act 2006 s 19(1)(a). 'Crime and disorder functions' means functions conferred by or under the Crime and Disorder Act 1998 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 reissue) PARA 855): Police and Justice Act 2006 s 19(11). See note 2.

6 Police and Justice Act 2006 s 19(1)(b). Where the crime and disorder committee makes such a report or recommendations it must provide a copy to each of the responsible authorities, and to each of the persons with whom, and bodies with which, the responsible authorities have a duty to co-operate under the Crime and Disorder Act 1998 s 5(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 reissue) PARA 855): Police and Justice Act 2006 s 19(2). See note 2.

7 Whether by virtue of the Local Government Act 2000 s 21(2) (see PARA 342) or regulations made under s 32(3) (see PARA 364) or otherwise. See also note 2.

8 Police and Justice Act 2006 s 19(3)(a) (s 19(3)-(8) substituted, and s 19(8A), (8B) added by the Local Government and Public Involvement in Health Act 2007 s 126(1), (2)). Where a crime and disorder committee of a local authority makes a report or recommendations to the authority by virtue of s 19(3)(a), it must: (1) provide a copy of the report or recommendations to any member of the authority who referred the local crime and disorder matter in question to the committee in accordance with arrangements made under s 19(3)(b) (see the text to note 9); and (2) provide a copy of the report or recommendations to such of the responsible authorities, and the co-operating persons and bodies, as it thinks appropriate: s 19(8) (as so substituted). See also note 2.

'Local crime and disorder matter', in relation to a member of a local authority, means a matter concerning crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment), or the misuse of drugs, alcohol and other substances, which affects all or part of the electoral area for which the member is elected or any person who lives or works in that area: Police and Justice Act 2006 s 19(11) (definition substituted by the Local Government and Public Involvement in Health Act 2007 s 126(1), (4)(b)). 'Electoral area' has the meaning given by the Representation of the People Act 1983 s 203(1) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 10): Police and Justice Act 2006 s 19(11) (definition added by the Local Government and Public Involvement in Health Act 2007 s 126(1), (4)). See also note 2.

9 Police and Justice Act 2006 s 19(3)(b) (as substituted: see note 8) For these purposes arrangements enable a person to refer a matter to a committee if they enable him to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee: s 19(4) (as substituted: see note 8). See also note 2.

10 See the Police and Justice Act 2006 s 19(5) (as substituted: see note 8). See also note 2.

11 The functions exercised by virtue of the Local Government and Public Involvement in Health Act 2007 s 236: see PARA 378.

12 The by virtue of the Police and Justice Act 2006 s 19(3)(a): see the text to note 8.

13 Police and Justice Act 2006 s 19(6) (as substituted: see note 8). See also note 2.

14 Police and Justice Act 2006 s 19(7) (as substituted: see note 8). See also note 2.

15 The by virtue of the Police and Justice Act 2006 s 19(3)(a): see the text to note 8.

16 The under the Police and Justice Act 2006 s 19(2) or (8)(b): see notes 6, 8.

17 Police and Justice Act 2006 s 19(8A), (8B) (as added: see note 8). See also note 2.

18 'Executive arrangements' means executive arrangements under the Local Government Act 2000 Pt 2 (ss 10-48): see PARA 303 et seq.

19 The within the meaning of the Local Government Act 2000 Pt 2 (ss 10-48): see PARA 303 et seq.

20 Police and Justice Act 2006 s 19(9) (amended by the Local Government and Public Involvement in Health Act 2007 s 126(1), (3)). See note 2.

21 As to the Secretary of State see PARA 96.

22 See the Police and Justice Act 2006 s 20(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 126(1), (5), (6)). As to the equivalent power exercisable in relation to local authorities in Wales see the Police and Justice Act 2006 s 20(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 126(1), (5), (6)). See note 2.

23 See the Police and Justice Act 2006 s 20(3)-(6), (6A) (s 20(5) amended, and s 20(6A) added by the Local Government and Public Involvement in Health Act 2007 ss 126(1), (2), (5), (7), 241, Sch 18 Pt 6). See also note 2. As to regulations made under s 20(3), (4) see the Crime and Disorder (Overview and Scrutiny) Regulations 2009, SI 2009/942.

UPDATE

485 Crime and disorder

NOTES 2, 23--Local Government and Public Involvement in Health Act 2007 s 126, s 241, Sch 18 Pt 6 in force on 1 October 2009 in relation to Wales: SI 2009/2539.

NOTE 23--SI 2009/942 amended: SI 2010/616.

486. Community care.

Local authorities in Wales are required to prepare and publish a plan for community care services¹.

¹ See the National Health Services and Community Care Act 1990 s 46; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1013.

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487. Education and children's services.

Children's services authorities¹ are required to prepare and publish plans setting out their strategy for discharging all their functions in relation to children and young persons².

¹ As to the meaning of 'children's services authority' see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187 note 1.

² In relation to local authorities in England see the Children Act 2004 s 17; the Children and Young People's Plan (England) Regulations 2005, SI 2005/2149; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 190. In relation to local authorities in Wales see the Children Act 2004 s 126; the Children and Young People's Plan (Wales) Regulations 2007, SI 2007/2316; Single Education Plan (Wales) Regulations 2006, SI 2006/877; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 192.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(1) GENERAL POWERS AND STRATEGIC FUNCTIONS/(v) Strategic Functions/488. Transport, roads and highways.

488. Transport, roads and highways.

Each local transport authority¹ must develop policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within their area, and carry out their functions so as to implement those policies². Such local transport plans must, in Wales, include a bus strategy³.

¹ As to the meaning of 'local transport authority' see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1190 note 1.

² See the Transport Act 2000 s 108; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1190.

³ See the Transport Act 2000 s 110; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1194.

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489. Sustainable communities.

Every local authority¹ must prepare a strategy for promoting or improving the economic, social and environmental well-being of its area² and contributing to the achievement of sustainable development in the United Kingdom³.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the power to promote economic, social or environmental well-being see PARA 463.

3 See the Local Government Act 2000 s 4(1); and PARA 464.

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(vi) Emergency Powers

490. Powers of principal councils with respect to emergency or disaster.

Where an emergency or disaster involving destruction of or danger to life or property occurs or is imminent or there is reasonable ground for apprehending such an emergency or disaster, and a principal council¹ is of opinion that it is likely to affect the whole or part of its area or all or some of its inhabitants, then that council may incur such expenditure as it considers necessary in taking action itself (either alone or jointly with any other person or body and either in its area or elsewhere in or outside the United Kingdom²) which is calculated to avert, alleviate or eradicate in its area or among its inhabitants the effects or potential effects of the event³; and make grants or loans to other persons or bodies on conditions determined by the council in respect of any such action taken by those persons or bodies⁴.

1 For these purposes 'principal council' includes the Common Council: see the Local Government Act 1972 s 138(4). As to the meaning of 'principal council' generally see PARA 23 As to the Common Council see PARA 35.

2 As to the meaning of 'United Kingdom' see PARA 116 note 18.

3 Local Government Act 1972 s 138(1)(a).

4 Local Government Act 1972 s 138(1)(b). Nothing in this section authorises a local authority to execute any drainage or other works in any part of a main river within the meaning of the Water Resources Act 1991 Pt IV (see **WATER AND WATERWAYS**), or of any other watercourse which is treated for the purposes of any of the provisions of that Act as part of a main river, or any works which local authorities have power to execute under the Land Drainage Act 1991 ss 14-17, 62(2), (3), 66 (see **WATER AND WATERWAYS**): Local Government Act 1972 s 138(3) (amended by the Local Government and Housing Act 1989 s 156(2)(a); and the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 22(2)). Subject to those limitations, the powers conferred by subsection (1) are, in addition to, and not in derogation of, any power conferred on a local authority by or under any other enactment, including any enactment contained in the Local Government Act 1972: s 138(3) (amended by the Local Government and Housing Act 1989 s 156(2)(b); and the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 1 para 7(b)). With the consent of the Secretary of State, a metropolitan county fire and rescue authority and the London Fire and Emergency Planning Authority may incur expenditure in co-ordinating planning by principal councils in connection with their functions under Local Government Act 1972 s 138(1): s 138(5) (added by the Local Government and Housing Act 1989 s 156(3); amended by the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 1 para 10(1), (2); and the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 16)). As to the Secretary of State see PARA 96. As to the metropolitan county fire and rescue authority and the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; and **LONDON**

GOVERNMENT. As to expenditure by local authorities see also **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 518 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(1) GENERAL POWERS AND STRATEGIC FUNCTIONS/(vii) Territorial Co-operation/491. European groupings of territorial cooperation.

(vii) Territorial Co-operation

491. European groupings of territorial cooperation.

European groupings of territorial cooperation ('EGTC') are bodies corporate established to facilitate and promote cross-border, transnational and interregional cooperation between their members, with the exclusive aim of strengthening economic and social cohesion¹. They are intended to reduce the difficulties encountered by member states and, in particular, by regional and local authorities in implementing and managing actions of territorial cooperation within the framework of differing national laws and procedures². An EGTC must be made up of members located on the territory of at least two member states³ and belonging to one or more of the following categories⁴:

- 445 (1) member states⁵;
- 446 (2) regional authorities⁶;
- 447 (3) local authorities⁷;
- 448 (4) contracting authorities for the purposes of public works contracts, public supply contracts and public service contracts⁸.

1 See the European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) on a European grouping of territorial cooperation, art 1. As to provision for the effective implementation of these regulations in the UK see the European Grouping of Territorial Cooperation Regulations 2007, SI 2007/1949.

2 European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) preamble (8).

3 See European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(2).

4 Associations consisting of bodies belonging to one or more of these categories may also be members: EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(1).

5 European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(1)(a).

6 European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(1)(b). As to areas and authorities in general see PARA 24 et seq.

7 European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(1)(c).

8 European Parliament and EC Council Regulation 1082/2006 (OJ L 210, 31.07.2006, p 19) art 3(1)(d). The bodies referred to in the text are those bodies governed by public law within the meaning of the European Parliament and Council Directive 2004/18/EC (OJ L 134, 30.4.2004, p 114) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, art 1(9): see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 23. As to public procurement see also PARA 418 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(i) Power to Contract/492. Power to contract.

(2) CONTRACTS, TRADING AND CHARGING

(i) Power to Contract

492. Power to contract.

The powers of local authorities¹ to enter into contracts² result from their range of specific statutory functions to provide public services³, from the many powers of local authorities to organise arrangements to enable them to discharge those functions⁴, and by reason of their statutory power to do anything calculated to facilitate or to be conducive or incidental to the discharge of those functions⁵. Within the statutory powers mentioned above, a local authority is as capable of contracting as is an individual, but is subject to a range of conditions or restrictions as to consents, formalities and the observation of rules for the proper exercise of decision-making as may be contained in legislation, whether public, general or local, and its own standing orders⁶. Certain of those powers relate in particular to land transactions⁷ or to borrowing transactions⁸ in relation to which powers to contract are subject to particular rules which a local authority must observe in addition to general rules as to contracts.

A local authority may make standing orders⁹ with respect to the making of contracts by it or on its behalf¹⁰, and must make such standing orders with respect to the making by it or on its behalf of contracts for the supply of goods or materials or for the execution of works¹¹. Members and officers of local authorities are subject to certain rules as to the declaration of interests in contracts; and there are restrictions and, in the case of members, prohibitions applied as regards taking part in relevant discussions and voting¹².

A person entering into a contract with a local authority is not bound to inquire whether its standing orders which apply to the contract have been complied with, and non-compliance with them does not generally invalidate any contract entered into by or on behalf of the authority¹³.

Subject to the provisions of their standing orders, local authorities may contract under seal¹⁴, under the hand of an authorised person¹⁵, or, in circumstances where the law does not require a written contract, orally¹⁶.

In the case of certain public works, supplies or services contracts, the European Union has adopted Directives, binding on all member states, to secure a common system for advertising and awarding such contracts, which have been implemented by regulations in the United Kingdom¹⁷.

1 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

2 As to the general capacity of corporations to enter into contracts see **CONTRACT** vol 9(1) (Reissue) PARA 630; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1269 et seq.

3 See PARA 579 et seq.

4 As to the discharge of functions see PARA 369 et seq. As to local government officers see PARA 425 et seq. As to the exercise of powers generally see PARA 460 et seq. As to land, property and financial powers see further **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

5 I.e. under the Local Government Act 1972 s 111: see PARA 462.

6 This has been the rule since the passing of the Corporate Bodies' Contracts Act 1960 s 1: see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122 et seq. As to standing orders see the text and notes 9-12; and PARA 434.

7 See the Local Government Act 1972 ss 120-131; and PARA 509 et seq. It is also necessary to take into account the many provisions in legislation relating to compulsory acquisition of land and town planning, which have direct effect on local authority land transactions: see PARA 508 et seq; and **COMPULSORY ACQUISITION OF LAND; TOWN AND COUNTRY PLANNING**.

8 See **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

9 For the general power of a local authority to make, vary or revoke standing orders with respect to proceedings and business see PARA 620.

10 Local Government Act 1972 s 135(1). Before a local authority operates executive arrangements under the Local Government Act 2000 Pt II (ss 10-48) (see PARA 303 et seq), it must make standing orders under the Local Government Act 1972 s 135 with respect to the making of contracts on its behalf in the course of the discharge of functions which are the responsibility of the executive of that authority: Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, art 8(1). The standing orders must include provision for securing that any contract which is of or above a value specified in the standing orders by the authority, or is of a description specified in the standing orders by the authority, must be in writing: art 8(2). The function of specifying a value or a description of contracts for these purposes must be discharged by the authority itself and the Local Government Act 1972 s 101 (see PARA 620) does not apply to that function: Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, art 8(3). The standing orders must also include provision for securing that any contract which is required by art 8(2) to be in writing: (1) is made under the authority's seal and attested by at least one officer of the authority who, in the case of an authority having a mayor and council manager executive, is not the council manager (whether or not the seal is also attested by any member of the authority or, in the case of an authority having a mayor and council manager executive, by the council manager); or (2) is signed by at least two officers of the authority (whether or not the contract is also signed by any member of the authority): art 8(4). Note that only a local authority in Wales may now operate a mayor and council manager executive: see PARAS 327, 333.

In relation to an authority which was operating executive arrangements on 18 May 2001 (ie the date on which the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, SI 2001/1517, came into force), the requirement to make the standing orders before it operates executive arrangements is to be treated as a requirement to make the standing orders as soon as reasonably practicable after that date: art 8(5).

Corresponding provision is made in relation to Wales by the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/803, art 7.

11 Local Government Act 1972 s 135(2). Such standing orders must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in standing orders, and may authorise the authority to exempt any contract from any such provision when the authority is satisfied that the exemption is justified by special circumstances: s 135(3).

12 For rules concerning interests of members of local authorities in contracts and other matters see PARA 286 et seq; and for the rules as to officers' interests in contracts see PARA 440.

13 Local Government Act 1972 s 135(4). See *R v Hereford Corpn, ex p Harrower* [1970] 3 All ER 460, [1970] 1 WLR 1424, DC; *North West Leicestershire District Council v East Midlands Housing Association Ltd* [1981] 3 All ER 364, [1981] 1 WLR 1396, CA. The duty to observe its own standing orders may be enforced by court order: see *R (McKee) v Belfast Corpn* [1954] NI 122. As to such court orders see **ADMINISTRATIVE LAW**.

14 For the circumstances in which a contract or other document must be under seal see **CONTRACT** vol 9(1) (Reissue) PARA 621; **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 40.

15 For powers of delegation of authority to act to committees, sub-committees and officers see PARA 369 et seq. There is no power to delegate power to a single member.

16 For the circumstances in which a written contract is required see **CONTRACT** vol 9(1) (Reissue) PARA 620 et seq. However, the local authority may have its own standing orders requiring contracts of kinds there specified to be in writing.

17 See PARA 418 et seq. As to the meaning of 'United Kingdom' see PARA 116 note 18.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(i) Power to Contract/493. Contracting-out the provision of services.

493. Contracting-out the provision of services.

In exercising a power to contract with a person for the provision of services, a relevant authority¹ must, in accordance with directions given to it by the appropriate person², deal with matters affecting³: (1) who will be the employer of existing staff⁴ if a contract is entered into and carried out⁵; or (2) what will be the terms and conditions of employment of existing staff, or the arrangements for their pensions, if their employer changes as a result of a contract being entered into and carried out⁶. In exercising such a power, a relevant authority must also have regard to guidance issued to it by the appropriate person on matters relating to the employment or pensions of existing staff⁷. Where the provision of any services under a contract with a relevant authority for their provision is to cease in circumstances where they are to be provided instead by members of the authority's staff, the authority must comply with directions given to it by the appropriate person for the purpose of requiring it to offer employment to staff who, before the services cease to be provided under the contract, are engaged in the provision of any of the services⁸.

Directions given, or guidance issued, for the purposes of the foregoing provisions may be addressed to all relevant authorities, or authorities of a particular description⁹, and may be different for different cases or authorities¹⁰.

1 For these purposes, a 'relevant authority' means: (1) a best value authority; (2) a parish council; (3) a parish meeting of a parish which does not have a separate parish council; or (4) a community council: Local Government Act 2003 s 101(7A) (added by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7 para 3(1), (9)(c)). As to best value authorities see PARA 688. As to parish councils see PARA 27 et seq. As to community councils see PARA 41 et seq.

2 For the purposes of the Local Government Act 2003 s 101, the Secretary of State is the 'appropriate person' in relation to a police authority for a police area in Wales: Local Government Act 2003 s 101(7) (substituted by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8 Pt 2 para 25(1), (4)). As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq. As to the meaning of 'appropriate person' generally see PARA 502 note 1.

3 Local Government Act 2003 s 101(1). As to the protection of pensions in staff transfer matters see PARA 494.

4 For these purposes, references to existing staff, in relation to a contract for the provision of services, are to staff who before the contract is carried out are engaged in the provision of any of the services: Local Government Act 2003 s 101(2).

5 Local Government Act 2003 s 101(1)(a)(i).

6 Local Government Act 2003 s 101(1)(a)(ii).

7 Local Government Act 2003 s 101(1)(b).

8 Local Government Act 2003 s 101(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7 para 3(1), 9(a)). The duties under the Local Government Act 1999 Pt I (ss 1-29) (see PARA 688 et seq) of a best value authority have effect subject to the Local Government Act 2003 s 101(1) and (3): s 101(4).

9 Local Government Act 2003 s 101(6)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7 para 3(1), 9(a)).

10 Local Government Act 2003 s 101(6)(b).

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494. Pension protection when contracting-out the provision of services.

The appropriate person¹ must exercise his power to give directions on matters relating to contracting out the provision of services² so as to secure that where a local authority³ is contracting with a person (the 'contractor') for the provision of services that are to be provided under a contract instead of by employees⁴ of the authority, it does so on terms⁵: (1) that require the contractor, in the event of there being any transferring employees⁶, to secure pension protection⁷ for each of them⁸; and (2) that, so far as relating to the securing of pension protection for a transferring employee, are enforceable by the employee⁹.

The appropriate person must also exercise this power to give directions¹⁰ so as to secure that where:

- 449 (a) a local authority has contracted with a person (the 'first contractor') for the provision of services¹¹;
- 450 (b) the application of the TUPE regulations in relation to what was done for the purposes of carrying out the contract between the authority and the first contractor resulted in employees of the authority (the 'original employees') becoming employees of someone other than the authority¹²; and
- 451 (c) the authority is contracting with a person (the 'subsequent contractor') for the provision of any of the services¹³,

the authority contracts with the subsequent contractor on terms satisfying the following requirements¹⁴:

- 452 (i) the terms must require the subsequent contractor, in the event of there being any transferring original employees¹⁵, to secure pension protection¹⁶ for each of them¹⁷; and
- 453 (ii) so far as relating to the securing of pension protection for an original employee, the terms are enforceable by the employee¹⁸.

1 As to the meaning of 'appropriate person' see PARA 502 note 1.

2 le under the Local Government Act 2003 s 101(1): see PARA 493.

3 As to the meaning of 'local authority' see PARA 23

4 'Employee' means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer are to be construed accordingly: Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 2(1); Local Government Act 2003 s 102(7).

5 Local Government Act 2003 s 102(1).

6 For these purposes 'transferring employee' means an employee of the authority whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the contractor, a contract of employment with someone other than the authority: Local Government Act 2003 s 102(2)(a). 'TUPE regulations' means the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (see **EMPLOYMENT**), or any regulations replacing those regulations, as from time to time amended: Local Government Act 2003 s 102(9) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7 para 3(1), (11) (d); and SI 2006/246). 'Contract of employment' means any agreement between an employee and his employer determining the terms and conditions of his employment: Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, reg 2(1); Local Government Act 2003 s 102(7).

7 For these purposes 'pension protection' is secured for a transferring employee if after that change in his employer he has, as an employee of his new employer, rights to acquire pension benefits and those rights are the same as, or under the directions count as being broadly comparable to or better than, those that he had as an employee of the authority: Local Government Act 2003 s 102(2)(b).

8 Local Government Act 2003 s 102(1)(a).

9 Local Government Act 2003 s 102(1)(b).

10 le under the Local Government Act 2003 s 101(1): see PARA 493.

11 Local Government Act 2003 s 102(3)(a).

12 Local Government Act 2003 s 102(3)(b).

13 Local Government Act 2003 s 102(3)(c).

14 Local Government Act 2003 s 102(3).

15 For these purposes 'transferring original employee' means an original employee: (1) whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the subsequent contractor, a contract of employment with someone other than his existing employer; and (2) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of the TUPE regulations in relation to what was done for the purposes of carrying out the intervening contract, a contract of employment with someone other than his existing employer: Local Government Act 2003 s 102(5)(a). For these purposes 'intervening contract' means a contract with the authority for the provision, at times after they are provided under the contract with the first contractor and before they are to be provided under a contract with the subsequent contractor, of the services to be provided under the contract with the subsequent contractor: s 102(6).

16 For these purposes 'pension protection' is secured for a transferring original employee if after the change in his employer mentioned in the Local Government Act 2003 s 102(5)(a) (see note 15) he has, as an employee of his new employer, rights to acquire pension benefits and those rights are the same as, or under the directions count as being broadly comparable to or better than, those that he had before that change: s 102(5)(b).

17 Local Government Act 2003 s 102(4)(a).

18 Local Government Act 2003 s 102(4)(b).

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495. Contracts for goods and services.

The Local Authorities (Goods and Services) Act 1970 provides that a local authority¹ and any public body² may enter into an agreement for all or any of the following purposes³:

- 454 (1) the supply by the authority to the body of any goods or materials⁴;
- 455 (2) the provision by the authority for the body of any administrative, professional or technical services⁵;
- 456 (3) the use by the body of any vehicle, plant or apparatus belonging to the authority⁶; and
- 457 (4) the carrying out by the authority of works of maintenance⁷ in connection with land or buildings for the maintenance of which the body is responsible⁸.

Any such agreement may contain such terms as to payment or otherwise as the parties consider appropriate⁹. The accounts of a local authority by whom agreements¹⁰ are entered into must include a separate account in respect of the agreements¹¹.

The powers under heads (1) to (3) above do not authorise a local authority to construct any building or works¹², or to be supplied with any property or provided with any service except for

the purposes of functions conferred on the authority otherwise than by the Local Authorities (Goods and Services) Act 1970¹³.

A relevant authority¹⁴ has power to provide professional, technical and administrative services for owners or occupiers of dwellings in connection with their arranging or carrying out relevant works¹⁵ or to encourage or facilitate the carrying out of such works, whether or not on payment of such charges as the authority may determine¹⁶.

1 For the purposes of the Local Authorities (Goods and Services) Act 1970, 'local authority' means the council of any county, county borough, district or London borough, the Greater London Authority, the Broads Authority, the Common Council of the City of London, the Council of the Isles of Scilly, any joint board, joint committee and combined authority and any joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), any joint waste authority, the London Fire and Emergency Planning Authority, Transport for London and the London Development Agency: Local Authorities (Goods and Services) Act 1970 s 1(4) (definition amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 ss 84, 102, Sch 14 para 47, Sch 17; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 8(1); the Local Government (Wales) Act 1994 s 25(8); the Greater London Authority Act 1999 s 388(a), (b); the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 29; and by virtue of the Local Government Act 1972 s 179(1), (3)). As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq; and as to the Council of the Isles of Scilly see PARA 36. As to joint authorities see PARA 47 et seq. As to the meaning of 'joint waste authority' see PARA 47 note 1. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to Transport for London and the London Development Agency see **LONDON GOVERNMENT**.

The following bodies are to be treated as local authorities for the purposes of the Local Authorities (Goods and Services) Act 1970: a residuary body established under the Local Government Act 1985 s 57 (see s 57(7), Sch 13 para 18; and PARA 17); the Residuary Body for Wales established under the Local Government (Wales) Act 1994 s 39, Sch 13 (see Sch 13 para 26; and PARA 18); and national park authorities (see the Environment Act 1995 s 65(7), Sch 8 para 5; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 642). As to the residuary bodies see PARA 66. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

The Local Authorities (Goods and Services) Act 1970 has effect as if the regional development agencies were local authorities for the purposes of that Act (other than s 2(2): see the text and note 11): see the Regional Development Agencies Act 1998 s 32, Sch 7 para 3. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to regional development agencies see **TRADE AND INDUSTRY** vol 97 (2010) para 988 et seq. A housing action trust and an urban development corporation established by an order under the Local Government, Planning and Land Act 1980 s 135 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq), may enter into any agreement with each other for all or any of the purposes set out in the Local Authorities (Goods and Services) Act 1970 s 1(1), as if they were local authorities within the meaning of that Act: see the Housing Act 1988 s 89(1); and **HOUSING** vol 22 (2006 Reissue) PARA 326. The provisions of the Local Authorities (Goods and Services) Act 1970 s 1(1)-(3) apply with modifications to a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139) and to the Common Council of the City of London in its capacity as the police authority for the City of London police force (see **POLICE** vol 36(1) (2007 Reissue) PARA 138) as they apply to a local authority except that references to a public body (see note 2) are to be read as references to any person: see s 18; and **POLICE** vol 36(1) (2007 Reissue) PARA 156.

2 'Public body' means any local authority, any police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), any housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (see **HOUSING** vol 22 (2006 Reissue) PARA 319 et seq), any probation trust, any person who is a public body by virtue of the Local Authorities (Goods and Services) Act 1970 s 1(5), any parish council and the parish trustees of a parish: Local Authorities (Goods and Services) Act 1970 s 1(4) (definition amended by the Local Government Act 1972 Sch 30; the Housing Act 1988 s 89(2); the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 5; the Police Act 1996 s 103, Sch 7 para 1(2)(g); the Police Act 1997 s 134(1), Sch 9 para 23; and SI 2008/912; and by virtue of the Local Government Act 1972 ss 179(1), (4), 251, Sch 29 para 5). As to probation trusts see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 733 et seq. As to parish trustees see PARA 34.

This definition of 'public body' has been extended by various statutory provisions (which generally have effect as if made under the Local Authorities (Goods and Services) Act 1970 s 1(5) and may accordingly be varied or revoked by an order under that provision) so as to include other bodies, such as: strategic health authorities, special health authorities and primary care trusts (see the National Health Service Act 2006 s 74(1); and **HEALTH SERVICES** vol 54 (2008) PARA 232); local health authorities (see the National Health Service (Wales) Act 2006 s 32(1); and **HEALTH SERVICES** vol 54 (2008) PARA 75 et seq); any institution within the further education sector or

the higher education sector (see the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt II PARA 71; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 638); the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales (see the Education Act 1997 s 57(1), Sch 7 para 2; and **EDUCATION**); any Education Action Forum established in an education action zone (see the School Standards and Framework Act 1998 s 140(1), Sch 30 para 2; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 453 et seq); national park authorities (see the Environment Act 1995 Sch 8 para 5; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 642); and urban development corporations (see the Local Government, Planning and Land Act 1980 s 163; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq). As to strategic health authorities see **HEALTH SERVICES** vol 54 (2008) PARA 94 et seq; and as to special health authorities see **HEALTH SERVICES** vol 54 (2008) PARA 136 et seq. As to primary care trusts see **HEALTH SERVICES** vol 54 (2008) PARA 111 et seq. As to the various educational bodies mentioned see **EDUCATION**.

The Local Authorities (Goods and Services) Act 1970 has effect as if the regional development agencies were public bodies for the purposes of that Act (other than s 2(2): see the text and note 11): see the Regional Development Agencies Act 1998 Sch 7 para 3; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq. For certain purposes, the Secretary of State is treated as a public body: see eg the Local Government Act 1985 s 57(7), Sch 13 para 18. The Great Yarmouth Port and Haven Commissioners are to be treated as a public body for the purposes of the provisions of the Local Authorities (Goods and Services) Act 1970 s 1(1)(a), (b) (see heads (1), (2) in the text) as those provisions apply in relation to agreements entered into by the Broads Authority: s 1(7) (added by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 8(2)). Where the provisions of the Local Authorities (Goods and Services) Act 1970 s 1(1)-(3) are applied to a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139) as if it were a local authority (see note 1), references to a public body are to be read as references to any person: see s 18; and **POLICE** vol 36(1) (2007 Reissue) PARA 156.

The definition of 'public body' also includes a local probation board established under the Criminal Justice and Court Services Act 2000 s 4: s 74, Sch 7 Pt II para 44(1). An order under the Local Authorities (Goods and Services) Act 1970 s 1(5) may repeal the provisions of the Criminal Justice and Court Services Act 2000 Sch 7 Pt II para 44(1) as they apply to a local probation board specified in the order: Sch 7 Pt II para 44(2). As to local probation boards see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 737 et seq.

The Secretary of State or the Welsh Ministers may by order made by statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament) provide that any person who is specified in the order or is of a description so specified, being a person or description of persons appearing to the Secretary of State or the Welsh Ministers to be exercising functions of a public nature, is to be a public body for the purposes of the Local Authorities (Goods and Services) Act 1970: s 1(5). Any such order may contain such provisions as the Secretary of State or the Welsh Ministers consider appropriate for restricting the agreements which may by virtue of the order be entered into by a public body (s 1(6)(a)), and for securing the inclusion in any agreement made by virtue of the order of terms imposing restrictions (s 1(6)(b)). An order may be revoked or varied by a subsequent order, which may contain such transitional provisions as the person making it considers appropriate: see s 2(5). The Local Authorities (Goods and Services) Act 1970 refers to the Minister of Housing and Local Government, but on the dissolution of the ministry the minister's functions were transferred to the Secretary of State: see the Secretary of State for the Environment Order 1970, SI 1970/1681. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

As to the orders that have been made under the Local Authorities (Goods and Services) Act 1970 s 1 see the Local Authorities (Goods and Services) (Public Bodies) Order 1972, SI 1972/853; the Local Authorities (Goods and Services) (Public Bodies) Order 1975, SI 1975/193; the Local Authorities (Goods and Services) (Public Bodies) Order 1981, SI 1981/1049; the Local Authorities (Goods and Services) (Public Bodies) Order 1990, SI 1990/433; the Local Authorities (Goods and Services) (Public Bodies) Order 1992, SI 1992/2830 (amended by the Learning and Skills Act 2000 s 73(3)(a)); the Local Authorities (Goods and Services) (Public Bodies) Order 1993, SI 1993/2097; the Local Authorities (Goods and Services) (Public Bodies) Order 1994, SI 1994/37; the Local Authorities (Goods and Services) (Public Bodies) (No 2) Order 1994, SI 1994/1389; the Local Authorities (Goods and Services) (Public Bodies) (Meat Hygiene) Order 1995, SI 1995/2626; the Local Authorities (Goods and Services) (Public Bodies) (Trunk Roads) Order 1996, SI 1996/342 (amended by SI 1997/849); the Local Authorities (Goods and Services) (Public Bodies) (Trunk Roads) (No 2) Order 1996, SI 1996/1814; the Local Authorities (Goods and Services) (Public Bodies) (The Julie Rose Stadium) Order 1996, SI 1996/2534; the Local Authorities (Goods and Services) (Public Bodies) (Sports Councils) Order 1996, SI 1996/3092; the Local Authorities (Goods and Services) (Public Bodies) Order 1997, SI 1997/101; the Local Authorities (Goods and Services) (Public Bodies) (Trunk Roads) Order 1997, SI 1997/204; the Local Authorities (Goods and Services) (Public Bodies) (Greater London Enterprise Limited) Order 1997, SI 1997/809; the Local Authorities (Goods and Services) (Public Bodies) (Trunk Roads) (No 2) Order 1997, SI 1997/850; the Local Authorities (Goods and Services) (Public Bodies) (English Heritage) Order 1997, SI 1997/1835; the Local Authorities (Goods and Services) (Public Bodies) (No 2) Order 1997, SI 1997/2095; the Local Authorities (Goods and Services) (Public Bodies) Order 1998, SI 1998/308; the Local Authorities (Goods and Services) (Public Bodies) (No 2) Order 1998, SI 1998/868; the Local Authorities (Goods and Services) (Public Bodies) (No 3) Order 1998, SI 1998/1123; the Local Authorities (Goods and Services) (Public Bodies) (No 4) Order 1998, SI 1998/1574; the Local Authorities (Goods and Services) (Public Bodies) (No 5) Order 1998, SI 1998/2956; the Local Authorities (Goods and Services) (Public Bodies) (No 6) Order 1998, SI 1998/3095; the Local Authorities (Goods and Services) (Public Bodies) Order 1999, SI 1999/421; the Local Authorities (Goods and Services) (Public Bodies) (No 2) Order 1999,

SI 1999/1754; the Local Authorities (Goods and Services) (Public Bodies) Order 2000, SI 2000/63; the Local Authorities (Goods and Services) (Public Bodies) (No 2) Order 2000, SI 2000/1027; the Local Authorities (Goods and Services) (Public Bodies) (England) Order 2001, SI 2001/243; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 2) Order 2001, SI 2001/691; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 3) Order 2001, SI 2001/1823; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 4) Order 2001, SI 2001/3347 (amended by SI 2003/2155); the Local Authorities (Goods and Services) (Public Bodies) (England) Order 2002, SI 2002/522; the Local Authorities (Goods and Services) (Public Bodies) (Wales) Order 2002, SI 2002/1729; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 2) Order 2002, SI 2002/2244; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 3) Order 2002, SI 2002/2624; the Local Authorities (Goods and Services) (Public Bodies) (England) Order 2003, SI 2003/354; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 2) Order 2003, SI 2003/1018; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 3) Order 2003, SI 2003/2069; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 4) Order 2003, SI 2003/2558; the Local Authorities (Goods and Services) (Public Bodies) (England) Order 2004, SI 2004/485; the Local Authorities (Goods and Services) (Public Bodies) (England) (No 2) Order 2004, SI 2004/2475; and the Local Authorities (Goods and Services) (Public Bodies) (Wales) Order 2004, SI 2004/2878.

3 Nothing in the Local Authorities (Goods and Services) Act 1970 s 1 is to be construed as derogating from any powers otherwise exercisable by any public body: s 2(1). As to the amendment or repeal of inconsistent or unnecessary local Acts see s 2(3).

As to the general powers of local authorities to discharge functions for each other, or to discharge them jointly, see the Local Government Act 1972 s 101; and PARA 493 et seq. Nothing in s 101 affects the operation of the Local Authorities (Goods and Services) Act 1970: Local Government Act 1972 s 101(14). The effect of this provision is uncertain, although one important effect appears to be to ensure that the powers under the Local Authorities (Goods and Services) Act 1970 are available in those cases (eg social services) in which the powers of the Local Government Act 1972 s 101 are limited. As to the power of one principal council in Wales to provide services for another see the Local Government (Wales) Act 1994 s 25; and PARA 417.

As to the exclusion of non-commercial considerations from local authority contracts see PARA 497 et seq.

As to the right of local authorities to terminate under a contract see eg *Rice (t/a Garden Guardian) v Great Yarmouth Borough Council* (2000) Times, 26 July, CA.

4 Local Authorities (Goods and Services) Act 1970 s 1(1)(a). A local authority may purchase and store any goods or materials which in its opinion it may require for these purposes: s 1(1). As to the scope of the powers conferred by these provisions see *R v Yorkshire Purchasing Organisation, ex p British Educational Suppliers Ltd* [1998] ELR 195, (1997) 95 LGR 727, CA.

5 Local Authorities (Goods and Services) Act 1970 s 1(1)(b).

6 Local Authorities (Goods and Services) Act 1970 s 1(1)(c). Without prejudice to s 1(1)(b) (see head (2) in the text), the powers under s 1(1)(c) include the placing at the disposal of the body of the services of any person employed in connection with the vehicle or other property in question: see s 1(1)(c).

7 'Works of maintenance' include minor renewals, minor improvements and minor extensions: Local Authorities (Goods and Services) Act 1970 s 1(4).

8 Local Authorities (Goods and Services) Act 1970 s 1(1)(d).

9 Local Authorities (Goods and Services) Act 1970 s 1(3).

10 The agreements in pursuance of the Local Authorities (Goods and Services) Act 1970 s 1 under which the authority is to provide any such property or service or do such work as is mentioned in s 1(1) (see the text and notes 1-8).

11 See the Local Authorities (Goods and Services) Act 1970 s 2(2). The provisions as to inspection and taking of copies of the abstract of the accounts of authorities (see now the Local Government Act 1972 s 228; and PARA 539) also extend to this separate account: see the Local Authorities (Goods and Services) Act 1970 s 2(2).

12 Local Authorities (Goods and Services) Act 1970 s 1(2)(a). However, in certain cases orders made under the Local Government Act 1972 s 254 (as to which see PARA 6) authorise the construction of buildings or works by one local authority for another: see the Local Authorities (Temporary Use of Labour) Order 1975, SI 1975/339, art 3 (amended by the Local Authorities (Restoration of Works Powers) Act 1977 s 1); the Local Authorities etc (Miscellaneous Provision) (No 2) Order 1975, SI 1975/944, art 8 (amended by the Local Authorities (Restoration of Works Powers) Act 1977 s 1); and the Local Authorities etc (Miscellaneous Provision) Order 1976, SI 1976/315, art 8 (amended by the Local Authorities (Restoration of Works Powers) Act 1977 s 1). For a list of the local authorities concerned (all of which embrace areas which contain the whole or part of the area of a former county borough or borough which, prior to local government reorganisation, operated a direct

labour works department which carried out building or works construction in that authority's area) see the Local Authorities (Restoration of Works Powers) Act 1977 s 1, Schedule.

13 Local Authorities (Goods and Services) Act 1970 s 1(2)(b).

14 'Relevant authority' means a local housing authority or county council: see the Local Government and Housing Act 1989 s 169(9); and **HOUSING** vol 22 (2006 Reissue) PARA 253. 'Local housing authority' means a district council, a London borough council, the Common Council of the City of London, a Welsh county council or county borough council, or the Council of the Isles of Scilly: see the Housing Act 1985 s 1 (definition applied by the Local Government and Housing Act 1989 s 169(9)); and **HOUSING** vol 22 (2006 Reissue) PARA 9. As to local housing authorities see further **HOUSING** vol 22 (2006 Reissue) PARA 9. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36.

15 Works are relevant works in relation to a dwelling or, as the case may be, a dwelling in any area, if they are works of any of the following descriptions, namely: (1) works to cause the dwelling to be fit for human habitation; (2) where the occupant is disabled, works for any of the purposes specified in the Housing Grants, Construction and Regeneration Act 1996 s 23: see the Local Government and Housing Act 1989 s 169(2); and **HOUSING** vol 22 (2006 Reissue) PARA 253.

16 See the Local Government and Housing Act 1989 s 169(1); and **HOUSING** vol 22 (2006 Reissue) PARA 253. The relevant authority must consider whether or not to make a charge for providing any services, and must take such measures as are reasonably available to it to secure contributions from other persons towards the cost of those services: see s 169(3).

There is power to give financial assistance for the provision of services of any description for owners or occupiers of dwellings in arranging maintenance, repair or improvement works or encouraging or facilitating the carrying out of such works: see the Local Government and Housing Act 1989 s 169(4)-(8); and **HOUSING** vol 22 (2006 Reissue) PARA 253.

UPDATE

495 Contracts for goods and services

NOTE 1--Definition of 'local authority' in Local Authorities (Goods and Services) Act 1970 s 1(4) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 9.

NOTE 2--Education Act 1997 Sch 7 para 2 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 25, Sch 16 Pt 4. Definition of 'public body' also includes the Qualifications and Curriculum Development Agency: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 3.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(i) Power to Contract/496. Discharge of local authority functions by contractor.

496. Discharge of local authority functions by contractor.

Every statutory provision conferring or imposing a function on a local authority¹ confers power on the local authority to enter into a contract with another person for the provision or making available of assets² or services, or both, for the purposes of, or in connection with, the discharge of the function by the local authority³.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'assets' see PARA 411 note 2.

3 See the Local Government (Contracts) Act 1997 s 1(1); and PARA 411 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(ii) Exclusion of Non-commercial Considerations/497. Exclusion of non-commercial considerations from public supply or works contracts.

(ii) Exclusion of Non-commercial Considerations

497. Exclusion of non-commercial considerations from public supply or works contracts.

It is the duty of every public authority to which these provisions apply¹, in exercising any regulated function² in relation to its public supply or works contracts, or any proposed or any subsisting such contract, as the case may be, to exercise that function without reference to matters which are non-commercial matters³ for these purposes⁴. The contracts which are 'public supply or works contracts' for these purposes are contracts for the supply of goods or materials, for the supply of services or for the execution of works⁵.

The duty imposed by these provisions⁶ does not create a criminal offence⁷, but a failure to comply with the duty is actionable by any person who, in consequence, suffers loss or damage⁸. In any action⁹ by a person who has submitted a tender for a proposed public supply or works contract arising out of the exercise of functions in relation to the proposed contract, the damages are limited to damages in respect of expenditure reasonably incurred by him for the purpose of submitting the tender¹⁰. In proceedings for judicial review¹¹, the persons who have a sufficient interest¹² in the matter include any potential contractor¹³ or, in the case of a contract which has been made, former potential contractor (or, in any case, any body representing contractors), as such¹⁴.

1 ie a local authority, an executive of a local authority within the meaning of the Local Government Act 2000 Pt II (ss 10-48) (see **PARA 303** et seq), the Greater London Authority, an urban development corporation established by an order under the Local Government, Planning and Land Act 1980 s 135 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA 1428** et seq), a development corporation established for the purposes of a new town, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in the Housing and Regeneration Act 2008 s 52(1) (a)-(d) (see **HOUSING**), a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) **PARA 139**), the Metropolitan Police Authority, a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies, a metropolitan county fire and rescue authority, the London Fire and Emergency Planning Authority, an Integrated Transport Authority for an integrated transport area in England, an authority established by an order under the Local Government Act 1985 s 10(1) (a waste disposal authority: see **PARA 17**), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (a joint waste authority: see **PARA 51**), the Broads Authority, any national park authority, a joint planning board constituted under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) **PARA 30**), a passenger transport executive (ie any body constituted as such an executive for a passenger transport area for the purposes of the Transport Act 1968 Pt II (ss 9-23A): see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) **PARA 247** et seq), a local probation board established under the Criminal Justice and Court Services Act 2000 s 4 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 737**), a probation trust, and a joint committee discharging functions of local authorities under the Local Government Act 1972 s 101 (see **PARA 370**): Local Government Act 1988 s 17(2), Sch 2 (amended by the Housing (Scotland) Act 1988 ss 1, 3, Sch 2 para 17, Sch 10; the Education Act 1993 s 307(1), (3), Sch 19 para 111, Sch 21 Pt II; the Local Government etc (Scotland) Act 1994 s 180(1), (2), Sch 13 para 156(6), Sch 14; the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 20; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 32; the Environment Act 1995 ss 65(7), 120(3), Sch 8 para 8(3), Sch 24; the Police Act 1996 s 103, Sch 7 para 1(2)(za); the Greater London Authority Act 1999 ss 80, 325, 328, Sch 27 para 57, Sch 29 Pt I para 50; the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 82; the Criminal Justice and Police Act 2001 Sch 6 para 44, Sch 7 Pt 5(1); the Civil Contingencies Act 2004 Schs 1 para 65, 2 Pt 1 para 10(2); the Local Government and Public Involvement in Health Act 2007 Sch 13 Pt 2 para 43; the Local Transport Act 2008 Sch 4 Pt 4 para 55(1), (2)(a); and by SI 2001/2237; SI 2002/808; and SI 2008/919). For these purposes, 'local authority' means:

737 (1) a county council, a district council, a London borough council, a parish council, a community council or the Council of the Isles of Scilly (Local Government Act 1988 s 17(2), Sch 2);

738 (2) the Common Council of the City of London in its capacity as local authority or police authority (Sch 2),

and includes a residuary body established by the Local Government Act 1985 Pt VII (ss 57-67): Local Government Act 1988 Sch 2. As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to development corporations established for the purposes of a new town see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1442; and as to the Commission for New Towns see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1159 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to fire and rescue authorities in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24. As to metropolitan county fire and civil defence authorities see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to probation trusts see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 733 et seq. As to joint authorities see PARA 47 et seq.

2 As to the functions regulated by these provisions see the Local Government Act 1988 s 17(4); and PARA 498.

3 As to non-commercial matters see PARA 499. If a public authority, in relation to public supply or works contracts or any proposed such contract, as the case may be:

739 (1) asks a question of any potential contractor relating to any non-commercial matter other than a question consideration of the answer to which is permitted under the Local Government Act 1988 s 18 (race relations matters: see PARA 500) (s 19(10)(a)); or

740 (2) submits to any potential contractor a draft contract or draft tender for a contract which includes terms or provisions relating to any non-commercial matter other than a term or provision the inclusion of which in the contract is permitted under s 18 (race relations matters: see PARA 500) (s 19(10)(b)),

the authority is to be treated as exercising functions regulated by s 17 by reference to non-commercial matters: s 19(10).

4 Local Government Act 1988 s 17(1). Section 17 is expressed to be subject to s 18 (race relations matters: see PARA 500): s 17(9). Section 17 applies to a public authority where, in exercising regulated functions, the authority is, as well as where it is not, acting on behalf of a Minister of the Crown: s 19(5). Where a public authority makes arrangements under the Local Government Act 1972 s 101 (see PARA 370), or regulations under the Local Government Act 2000 s 19 (see PARA 361) for the exercise by another public authority of any regulated function, the Local Government Act 1988 s 17 applies to that other public authority in exercising that function as if it were exercising the function in relation to its own public supply or works contracts, or any proposed or any subsisting such contract, as the case may be: s 19(6) (amended by SI 2001/2237; and SI 2002/808).

In consequence of s 17, the provision which requires local authorities to secure the insertion of fair wages clauses in all housing contracts (ie the Housing Act 1985 s 52(a)) has ceased to have effect: Local Government Act 1988 s 19(11).

5 Local Government Act 1988 s 17(3). See also the Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001, SI 2001/909, art 1(2). The Local Government Act 1988 s 17 does not apply in relation to contracts entered into before 7 April 1988 (ie the date of commencement of ss 17-22: see s 23): s 17(3).

6 Ie the Local Government Act 1988 s 17(1): see the text and notes 1-4.

7 Local Government Act 1988 s 19(7).

8 Local Government Act 1988 s 19(7)(b).

9 Ie under the Local Government Act 1988 s 17(1): see the text and notes 1-4.

10 Local Government Act 1988 s 19(8).

11 As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

12 As to sufficient interest see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

13 For these purposes, 'contractor', except in relation to a subsisting contract, means a 'potential contractor', that is to say: (1) in relation to functions as respects an approved list, any person who is or seeks to be included in the list; and (2) in relation to functions as respects a proposed public supply or works contract, any person who is or seeks to be included in the group of persons from whom tenders are invited or who seeks to submit a tender for or enter into the proposed contract, as the case may be: Local Government Act 1988 ss 17(8), 19(12). 'Approved list' means such a list as is mentioned in s 17(4)(a) (see PARA 498): s 17(8).

14 Local Government Act 1988 s 19(7)(a). Nothing in s 17 or s 19(1) (see PARA 499) implies that the exercise of any function regulated by s 17 may not be impugned, in proceedings for judicial review, on the ground that it was exercised by reference to other matters than those which are non-commercial matters for the purposes of s 17: s 19(9).

UPDATE

497 Exclusion of non-commercial considerations from public supply or works contracts

NOTE 1--Local Government Act 1988 Sch 2 further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 73.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(ii) Exclusion of Non-commercial Considerations/498. Regulated functions.

498. Regulated functions.

The functions regulated by the provisions relating to the exclusion of non-commercial considerations¹ from public supply or works contracts² of a public authority³ are:

- 458 (1) the inclusion of persons in or the exclusion⁴ of persons from any list of persons approved⁵ for the purposes of public supply or works contracts with the authority, or any list of persons from whom tenders for such contracts may be invited⁶;
- 459 (2) in relation to a proposed public supply or works contract with the authority:
 - (a) the inclusion of persons in or the exclusion of persons from the group of persons from whom tenders are invited⁷; (b) the accepting or not accepting the submission of tenders for the contract⁸; (c) the selecting the person with whom to enter into the contract⁹; or (d) the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors¹⁰ for the purposes of the contract¹¹; and
- 460 (3) in relation to a subsisting public supply or works contract with the authority, the giving or withholding approval for, or the selecting or nominating, persons to be sub-contractors for the purposes of the contract, or the termination of the contract¹².

1 As to non-commercial considerations see PARA 499.

2 As to the meaning of 'public supply or works contracts' see PARA 497.

3 The provisions referred to in the text are those of the Local Government Act 1988 s 17: see PARA 497. As to the public authorities to which these provisions apply see s 17(2), Sch 2; and PARA 497 note 1.

4 For these purposes, 'exclusion' includes removal: Local Government Act 1988 s 17(8). Section 17 is expressed to be subject to s 18 (race relations matters: see PARA 500): s 17(9).

5 A public authority which maintains an approved list may not require a person to pay any sum as a condition of his inclusion or continued inclusion in the list or of his being considered for such inclusion: Local Government Act 1988 s 22(1). This provision does not create an offence but a contravention of it is actionable by the person seeking to be included or retained in the list: s 22(2). As to the meaning of 'approved list' see PARA 497 note 13.

6 Local Government Act 1988 s 17(4)(a). For the transitional provisions relating to the duty of public authorities as regards existing approved lists see s 21.

7 Local Government Act 1988 s 17(4)(b)(i).

8 Local Government Act 1988 s 17(4)(b)(ii).

9 Local Government Act 1988 s 17(4)(b)(iii).

10 For these purposes, 'suppliers or customers' includes prospective suppliers or customers; 'sub-contractors' includes prospective sub-contractors; and 'supplier', in relation to a contractor, includes any person who, in the course of business, supplies him with services or facilities of any description for the purposes of his business: see the Local Government Act 1988 s 17(8).

11 Local Government Act 1988 s 17(4)(b)(iv).

12 Local Government Act 1988 s 17(4)(c).

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499. Non-commercial considerations.

The following matters are non-commercial matters as regards the public supply or works contracts¹ of a public authority², or any proposed or any subsisting such contract, as the case may be³, and as such are excluded from the consideration of public authorities in exercising regulated functions⁴:

- 461 (1) the terms and conditions of employment by contractors⁵ of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces⁶;
- 462 (2) whether the terms on which contractors contract with their sub-contractors⁷ constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only⁸;
- 463 (3) any involvement of the business activities or interests⁹ of contractors with irrelevant fields of government policy¹⁰;
- 464 (4) the conduct of contractors or workers in industrial disputes¹¹ between them or any involvement of the business activities of contractors in industrial disputes between other persons¹²;
- 465 (5) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors¹³;
- 466 (6) any political, industrial or sectarian affiliations¹⁴ or interests of contractors or their directors, partners or employees¹⁵;
- 467 (7) financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support¹⁶;
- 468 (8) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984¹⁷.

The matters specified above include matters which have occurred in the past as well as matters which subsist when the function in question falls to be exercised¹⁸. Where any matter referable to a contractor would, as a matter specified above, be a non-commercial matter in relation to him, the corresponding matter referable to:

- 469 (a) a supplier or customer of the contractor¹⁹;
- 470 (b) a sub-contractor of the contractor or his supplier or customer²⁰;
- 471 (c) an associated body of the contractor or his supplier or customer²¹; or
- 472 (d) a sub-contractor of an associated body of the contractor or his supplier or customer²²,

is also, in relation to the contractor, a non-commercial matter for these purposes²³.

The Secretary of State or the Welsh Ministers²⁴ may, by order made by statutory instrument, specify as a non-commercial matter²⁵ any other matter which appears to him or them to be irrelevant to the commercial purposes of public supply or works contracts of any description²⁶. The Secretary of State or the Welsh Ministers may also by order provide, in relation to all relevant authorities²⁷, particular relevant authorities²⁸, or particular descriptions of relevant authority²⁹, for a specified matter to cease to be a non-commercial matter for these purposes³⁰. Such an order may: (i) provide for a matter to cease to be a non-commercial matter for specified purposes or to a specified extent; (ii) apply in relation to specified authorities, functions or contracts; (iii) make different provision for different cases in particular, power to make different provision for different authorities or descriptions of authority; (iv) include consequential or transitional provision, including provision amending an enactment³¹.

1 As to the meaning of 'public supply or works contracts' see PARA 497.

2 As to the public authorities to which these provisions apply see the Local Government Act 1988 s 17(2), Sch 2; and PARA 497 note 1.

3 Local Government Act 1988 s 17(5). Section 17 is expressed to be subject to s 18 (race relations matters: see PARA 500): s 17(9).

4 As to regulated functions see PARA 498.

5 As to the meaning of 'contractor' see PARA 497 note 13.

6 Local Government Act 1988 s 17(5)(a).

7 As to the meaning of 'sub-contractors' see PARA 498 note 10.

8 Local Government Act 1988 s 17(5)(b).

9 For these purposes, 'business' includes any trade or profession: Local Government Act 1988 s 17(8). 'Business activities' and 'business interests', in relation to a contractor or other person, mean respectively any activities comprised in, or any investments employed in or attributable to, the carrying on of his business; and 'activity' includes receiving the benefit of the performance of any contract: s 17(8).

10 Local Government Act 1988 s 17(5)(c). For these purposes, government policy falls within 'irrelevant fields' if it concerns matters of defence or foreign or Commonwealth policy; and 'involve', as regards business activities and any such field of policy, includes the supply of goods or materials or services to, or the execution of works for, any authority or person having functions or carrying on business in that field and, as regards business interests and any such field of policy, includes investment in any authority or person whose business activities are so involved: s 17(8).

11 For these purposes, 'industrial dispute' has, as regards a dispute in Great Britain, the same meaning as 'trade dispute' in the Trade Union and Labour Relations (Consolidation) Act 1992 Pt V (ss 219-246) (see **EMPLOYMENT** vol 41 (2009) PARA 1324); and 'involve', as regards business activities and an industrial dispute, includes the supply of goods, materials or services to or by, or the execution of works for or by, any party to the

dispute, any other person affected by the dispute, or any authority concerned with the enforcement of law and order in relation to the dispute: Local Government Act 1988 s 17(8) (definition amended by the Trade Union and Labour Relations (Consolidation) Act 1992 s 300(2), Sch 2 para 38). As to the meaning of 'Great Britain' see PARA 116 note 18.

12 Local Government Act 1988 s 17(5)(d).

13 Local Government Act 1988 s 17(5)(e).

14 For these purposes, 'political, industrial or sectarian affiliations or interests' means actual or potential membership of, or actual or potential support for, respectively, any political party, any employers' association or trade union or any society, fraternity or other association: Local Government Act 1988 s 17(8). For these purposes, 'employers' association' and 'trade union' have, as regards bodies constituted under the law of England and Wales, the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 ss 1, 122 (see **EMPLOYMENT** vol 40 (2009) PARAS 846, 1028): Local Government Act 1988 s 17(8) (definitions amended by the Trade Union and Labour Relations (Consolidation) Act 1992 s 300(2), Sch 2 para 38).

15 Local Government Act 1988 s 17(5)(f).

16 Local Government Act 1988 s 17(5)(g).

17 Local Government Act 1988 s 17(5)(h).

18 Local Government Act 1988 s 17(6).

19 Local Government Act 1988 s 17(7)(a). As to the meaning of 'suppliers or customers' see PARA 498 note 10.

20 Local Government Act 1988 s 17(7)(b).

21 Local Government Act 1988 s 17(7)(c). For these purposes, 'associated body', in relation to a contractor, means any company which (within the meaning of the Companies Act 1985) is the contractor's holding company or subsidiary or is a subsidiary of the contractor's holding company (see **COMPANIES** vol 14 (2009) PARA 25): Local Government Act 1988 s 17(8).

22 Local Government Act 1988 s 17(7)(d).

23 Local Government Act 1988 s 17(7).

24 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

25 Ie for the purposes of the Local Government Act 1998 s 17: see PARA 497.

26 Local Government Act 1988 s 19(1). This includes power to apply the provisions of s 17(6)-(7) (see the text and notes 18-23) to any matter specified in the order and to amend any definition in s 17(8) of an expression used in heads (1)-(8) in the text without making any other provision: s 19(2). Such an order may include such consequential and transitional provisions as appear to the Secretary of State or the Welsh Ministers to be necessary or expedient: s 19(3). No such order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament: s 19(4). At the date at which this volume states the law no such order had been made.

27 Local Government Act 1999 s 19(1)(a) (amended by the Local Government Act 2003 Sch 3 para 10(2); and the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7, para 2(1), (3)). For these purposes 'relevant authority means: (1) a best value authority; (2) a parish council; or (3) a community council: Local Government Act 1999 s 19(5) (added by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7, para 2(1), (3)). As from a day to be appointed the Local Government Act 1999 s 19(5) is amended by the Local Government (Wales) Measure 2009 Sch 1 paras 9, 18 to add a reference to a Welsh improvement authority for the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-47) (see PARA 711 et seq). At the date at which this volume states the law no such day had been appointed. As to best value authorities see PARA 688 et seq. As to parish councils see PARA 27 et seq. As to community councils see PARA 41 et seq.

28 Local Government Act 1999 s 19(1)(b) (amended by the Local Government Act 2003 Sch 3 para 10(2); and the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7, para 2(1), (3)).

29 Local Government Act 1999 s 19(1)(c) (amended by the Local Government Act 2003 Sch 3 para 10(2); and the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7, para 2(1), (3)).

30 Local Government Act 1999 s 19(1). The purposes specified in the text are those for the Local Government Act 1988 s 17: see PARA 497 et seq.

31 Local Government Act 1999 s 19(2), (2A) (s 19(2A) added by Local Government Act 2003 Sch 3 para 10(3)). No such order may be made unless a draft has been laid before, and approved by resolution of, each House of Parliament: s 19(3) (amended by Local Government Act 2003 Sch 3 para 10(4)). However, an order under the Local Government Act 1999 s 19 which is made only for the purpose of amending an earlier order under s 19 so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description, is subject to annulment in pursuance of a resolution of either House of Parliament: s 19(3A) (added by the Local Government Act 2003 Sch 3 para 10(5)). In exercising a function regulated by the Local Government Act 1988 s 17 with reference to a matter which is the subject of an order under the Local Government Act 1999 s 19, a relevant authority must have regard to any guidance issued by the Secretary of State: s 19(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(3), Sch 7 para 2(1), (3)).

By order under the Local Government Act 1999 s 19, in relation to all best value authorities in England, and to authorities falling within the Local Government Act 1999 s 1(1)(d) or (e) in Wales (see PARA 688), the matters specified in head (1) in the text and the conduct of contractors or workers in industrial disputes between them as specified in head (4) in the text have ceased to be non-commercial matters for the purposes of the Local Government Act 1988 s 17:

741 (1) to the extent that a best value authority considers it necessary or expedient, in order to permit or facilitate compliance with the Local Government Act 1999 Pt I (ss 1-29) (best value requirements: see PARA 688 et seq), to exercise the functions regulated by the Local Government Act 1988 s 17 in relation to its public supply or works contracts with reference to those matters (Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001, SI 2001/909, arts 2, 3(a)); or

742 (2) for the purposes of any such functions in relation to a public supply or works contract which involves a transfer of staff to which the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, may apply (Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001, SI 2001/909, arts 2, 3(b)).

By order under the Local Government Act 1999 s 19 in relation to all best value authorities in Wales, except police authorities, the matters specified in heads (1) and (4) in the text have ceased to be non-commercial matters for the purposes of the Local Government Act 1988 s 17: see the Local Government Best Value (Exclusion of Non-commercial Considerations) (Wales) Order 2002, SI 2002/678, arts 1, 2 (art 1 amended by SI 2005/2929).

As to the transfer of undertakings see further **EMPLOYMENT** vol 39 (2009) PARA 111 et seq.

UPDATE

499 Non-commercial considerations

NOTE 21--Definition of 'associated body' amended: SI 2009/1941.

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500. Race relations matters.

The provisions of the Race Relations Act 1976¹, and any duty imposed by an order under those provisions², relating to the need to eliminate unlawful racial discrimination and promote equality of opportunity, and good relations, between persons of different racial groups do not require or authorise a public authority to which the provisions relating to the exclusion of non-commercial considerations³ from public supply or works contracts⁴ apply⁵ to exercise any regulated function⁶ by reference to a non-commercial matter⁷.

Nothing in the provisions relating to the exclusion of non-commercial considerations from public supply or works contracts⁸ precludes a public authority to which those provisions apply from⁹:

- 473 (1) asking approved questions¹⁰ seeking information or undertakings relating to workforce matters¹¹ and considering the responses to them¹²; or
- 474 (2) including in a draft contract or draft tender for a contract terms or provisions relating to workforce matters and considering the responses to them¹³,

if, as the case may be, consideration of the information, the giving of the undertaking or the inclusion of the term is reasonably necessary to secure compliance with the provisions of the Race Relations Act 1976¹⁴. This does not apply to the function of terminating a subsisting contract and, in relation to functions as respects approved lists¹⁵ or proposed contracts, does not authorise questions in other than written form¹⁶. Where it is permissible under these provisions to ask a question it is also permissible to make, if it is in writing, an approved request for evidence¹⁷ in support of an answer to the question¹⁸.

1 le the Race Relations Act 1976 s 71(1): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 469.

2 le a duty imposed by an order under the Race Relations Act 1976 s 71(2): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 469.

3 As to the meaning of 'non-commercial considerations' see PARA 499; definition applied by the Local Government Act 1988 s 18(7).

4 As to the meaning of 'public supply or works contracts' see PARA 497; definition applied by the Local Government Act 1988 s 18(7).

5 The provisions referred to in the text are those of the Local Government Act 1988 s 17: see PARAS 497-499. As to the public authorities to which these provisions apply see s 17(2), Sch 2; and PARA 497 note 1.

6 le any function regulated by the Local Government Act 1988 s 17 (see PARA 498); definition applied by s 18(7).

7 Local Government Act 1988 s 18(1) (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 20(a), (b)), which is expressed to be subject to the Local Government Act 1988 s 18(2) (see the text to notes 8-14).

8 le the provisions of the Local Government Act 1988 s 17: see PARAS 497-499.

9 Local Government Act 1988 s 18(2) (amended by the Race Relations (Amendment) Act 2000 Sch 2 para 21(a)).

10 For these purposes, 'approved question' means a question for the time being specified by the Secretary of State or the Welsh Ministers under the Local Government Act 1988 s 18(5): s 18(7). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. The Secretary of State or the Welsh Ministers may specify in writing: (1) questions which are to be approved questions for these purposes; and (2) descriptions of evidence which, in relation to approved questions, are to be approved descriptions of evidence for these purposes: s 18(5). Any such specification may include such consequential or transitional provisions as appear to the Secretary of State or the Welsh Ministers to be necessary or expedient: s 18(6).

11 For these purposes, 'workforce matters' means only matters falling within the Local Government Act 1988 s 17(5)(a) (see PARA 499 head (1)): see s 18(7).

12 Local Government Act 1988 s 18(2)(a).

13 Local Government Act 1988 s 18(2)(b).

14 Local Government Act 1988 s 18(2) (amended by the Race Relations (Amendment) Act 2000 Sch 2 para 21(b)), which is expressed to be subject to the Local Government Act 1988 s 18(3) (see the text to notes 15-16). The provisions referred to in the text are those of the Race Relations Act 1976 s 71(1) or any order under s 71(2): see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 469.

15 As to the meaning of 'approved list' see PARA 497 note 13; definition applied by the Local Government Act 1988 s 18(7).

16 Local Government Act 1988 s 18(3).

17 For these purposes, 'approved request for evidence' means a request for evidence of a description for the time being specified by the Secretary of State or the Welsh Ministers under the Local Government Act 1988 s 18(5) (see note 10) in relation to an approved question: s 18(7).

18 Local Government Act 1988 s 18(4).

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501. Duty of public authorities to give reasons for certain decisions.

Where a public authority¹ exercises a function² regulated by provisions relating to the exclusion of non-commercial considerations³ from public supply or works contracts⁴ by making, in relation to any person, a decision to which this provision applies, it is the duty of the authority forthwith to notify that person of the decision and, if that person so requests in writing within the period of 15 days beginning with the date of the notice, to furnish him with a written statement of the reasons for the decision⁵. This provision applies to the following decisions in relation to any person:

- 475 (1) in relation to an approved list⁶, a decision to exclude him from the list⁷;
- 476 (2) in relation to a proposed public supply or works contract: (a) where he has asked to be invited to tender for the contract, a decision not to invite him to tender⁸; (b) a decision not to accept the submission by him of a tender for the contract⁹; (c) where he has submitted a tender for the contract, a decision not to enter into the contract with him¹⁰; or (d) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors¹¹ for the purposes of the contract¹²; or
- 477 (3) in relation to a subsisting public supply or works contract with him, a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract, or a decision to terminate the contract¹³.

1 As to the public authorities to which these provisions apply see the Local Government Act 1988 s 17(2), Sch 2; and PARA 497 note 1.

2 As to the functions regulated by these provisions see PARA 498; definition applied by the Local Government Act 1988 s 20(6).

3 As to the meaning of 'non-commercial considerations' see PARA 499; definition applied by the Local Government Act 1988 s 20(6).

4 The provisions referred to in the text are those of the Local Government Act 1988 s 17: see PARAS 497-499. As to the meaning of 'public supply or works contract' see PARA 497; definition applied by s 20(6).

5 Local Government Act 1988 s 20(1). Such a statement of reasons must be sent to the person requesting it within the period of 15 days beginning with the date of the request: s 20(3). The Secretary of State or the Welsh Ministers may by order amend s 20(1) or s 20(3) so as to substitute for the period of 15 days such other period as he or they think fit and such an order may make different amendments of s 20(1) and s 20(3): s 20(4). This power is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of

either House of Parliament: s 20(5). At the date at which this volume states the law no such order had been made. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 As to the meaning of 'approved list' see PARA 497 note 13; definition applied by Local Government Act 1988 s 20(6).

7 Local Government Act 1988 s 20(2)(a).

8 Local Government Act 1988 s 20(2)(b)(i).

9 Local Government Act 1988 s 20(2)(b)(ii).

10 Local Government Act 1988 s 20(2)(b)(iii).

11 As to the meaning of 'sub-contractors' see PARA 498 note 10; definition applied by the Local Government Act 1988 s 20(6).

12 Local Government Act 1988 s 20(2)(b)(iv).

13 Local Government Act 1988 s 20(2)(c).

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(iii) Power to Trade in Function-related Activities

502. Power to trade in function-related activities through a company.

The appropriate person¹ may by order authorise relevant authorities² to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions³. The appropriate person may also make provision by order about the persons in relation to whom such authority is exercisable⁴.

No such order may authorise a relevant authority to do⁵:

- 478 (1) in relation to a person anything which it is required to do in relation to him under its ordinary functions⁶; or
- 479 (2) in relation to a person anything which it is authorised, apart from these provisions, to do in relation to him for a commercial purpose⁷.

However, such an order may be made in relation to:

- 480 (a) all relevant authorities, particular relevant authorities or particular descriptions of relevant authority⁸;
- 481 (b) all things authorised to be done for the purpose of carrying on a particular function, particular things authorised to be done for that purpose or particular descriptions of things authorised to be so done⁹.

Power conferred by an order under these provisions is only exercisable through a company in which a local authority has an interest¹⁰. A relevant authority on which power is conferred by an order under these provisions is to be treated as a local authority for the purposes of Part V of the Local Government and Housing Act 1989¹¹ if it would not otherwise be such an authority,

but only in relation to a body corporate through which it exercises, or proposes to exercise, the power conferred by the order¹².

1 'Appropriate person' means in relation to England, the Secretary of State, and in relation to Wales, the Welsh Ministers: Local Government Act 2003 s 124. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 In the Local Government Act 2003 s 95 'relevant authority' means: (1) a best value authority, other than a police authority or the London Development Agency; (2) a parish council; (3) a parish meeting of a parish which does not have a separate parish council; or (4) a community council: s 95(7) (definition substituted by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(d)). 'Police authority' means: (a) a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq); (b) the Common Council of the City of London in its capacity as a police authority; or (c) the Metropolitan Police Authority: Local Government Act 2003 s 95(7) (definition substituted by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(d)). 'Best value authority' means an authority or body which is a best value authority for the purposes of the Local Government Act 1999 Pt 1 (ss 1-29: see PARA 688 et seq): Local Government Act 2003 s 124. As to parish councils see PARA 27 et seq. As to community councils see PARA 41 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155.

3 Local Government Act 2003 s 95(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(a)). 'Ordinary functions', in relation to a relevant authority, means functions of the authority which are not functions under s 95: s 95(7) (definition amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(b)). See also *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL.

An appropriate best value authority (see note 4) is authorised to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 2(1); Local Government (Best Value Authorities) (Power to Trade) (Wales) Orders 2006, SI 2006/979, art 2(1). Before exercising this power a best value authority must prepare a business case in support of the proposed exercise of that power and approve that business case: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 2(2); Local Government (Best Value Authorities) (Power to Trade) (Wales) Orders 2006, SI 2006/979, art 2(2). For these purposes 'business case' means a comprehensive statement as to (1) the objectives of the business; (2) the investment and other resources required to achieve those objectives; (3) any risks that the business might face and how significant these risks are; and (4) the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 2(4); Local Government (Best Value Authorities) (Power to Trade) (Wales) Orders 2006, SI 2006/979, art 2(4). A best value authority must also recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to a company in pursuance of any agreement or arrangement to facilitate the exercise of its power to trade in function-related activities: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 2(3); Local Government (Best Value Authorities) (Power to Trade) (Wales) Orders 2006, SI 2006/979, art 2(3).

4 Local Government Act 2003 s 95(1)(b).

In England, only those best value authorities which are local authorities within the meaning of the Local Government Act 1999 s 1(2) (see PARA 688) and have been categorised as excellent, good, fair, 4 stars, 3 stars, 2 stars, or 1 star pursuant to assessment under the Local Government Act 2003 s 99 (see PARA 789) are authorised to trade in function-related activities: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 2(a), (b) (amended by SI 2004/2307; and SI 2006/3102). A best value authority which is: (1) a non-metropolitan county council; (2) a non-metropolitan district council for an area for which there is no county council; (3) or the Council of the Isles of Scilly, when acting in its capacity as a fire and rescue authority, is not so authorised: Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 1(2)(a), (b) (amended by SI 2004/2307). Transitional provision is made in respect of fire and rescue authorities (see art 4 (amended by SI 2004/2307)); and is also made for where a best value authority ceases to be within one of the categories specified above (see Local Government (Best Value Authorities) (Power to Trade) (England) Orders 2004, SI 2004/1705, art 3).

In Wales any best value authorities which are county councils or county borough councils, national park authorities, or fire and rescue authorities constituted under a scheme under the Fire and Rescue Service Act 2004 s 2 or a scheme to which s 4 of that Act (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24) are authorised to trade in function-related activities: Local Government (Best Value Authorities) (Power to Trade) (Wales) Orders 2006, SI 2006/979, art 1(2).

As to best value authorities see PARA 688 et seq. As to areas and authorities in England see PARA 24 et seq; as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 Local Government Act 2003 s 95(2) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(a)).

6 Local Government Act 2003 s 95(2)(a).

7 Local Government Act 2003 s 95(2)(b).

8 Local Government Act 2003 s 95(3)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(d)).

9 Local Government Act 2003 s 95(3)(b).

10 Local Government Act 2003 s 95(4). A company in which a local authority has an interest is a company within the meaning of the Local Government and Housing Act 1989 Pt V (ss 67-73): see PARA 402 et seq.

As from a day to be appointed s 95(4) is amended by the Local Government and Public Involvement in Health Act 2007 ss 216(2), 241, Sch 14 para 5(1), (4)(a), Sch 18 Pt 16 to remove the requirement that the company need be one in which a local authority has an interest. As from that day 'company' for these purposes means (1) a company within the meaning given by the Companies Act 2006 s 1(1); or (2) a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969 (see **COMPANIES** vol 14 (2009) PARAS 1, 24): Local Government Act 2003 s 95(7) (definition added by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (4)(c)). At the date at which this volume states the law no such day had been appointed.

11 In the Local Government and Housing Act 1989 Pt V (ss 67-73): see PARA 402 et seq.

12 Local Government Act 2003 s 95(5) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (5)(b)). In its application by virtue of s 95(5), the Local Government and Housing Act 1989 s 70(1) (power to make provision about what a company under the control, or subject to the influence of, a local authority does: see PARA 404) only applies in relation to the doing for a commercial purpose of the thing to which the order under the Local Government Act 2003 s 95 relates: s 95(6).

As from a day to be appointed s 95(5), (6) are substituted by the Local Government and Public Involvement in Health Act 2007 s 216(2), Sch 14 para 5(1), (4)(b) to provide that an order under the Local Government and Public Involvement in Health Act 2007 s 212 (see PARA 406) may include provision applying any of the provisions of that order, with or without modifications (1) to a company through which a relevant authority which is not a local authority for the purposes of that section exercises or proposes to exercise powers conferred by order under the Local Government Act 2003 s 95; or (2) to such a relevant authority, or members or officers of such a relevant authority, in relation to such a company: s 95(5) (as so prospectively substituted). Any requirement or prohibition imposed on or in relation to a company by virtue of this provision must relate to the doing for a commercial purpose of the thing to which the order under this section relates: s 95(6) (as so prospectively substituted). At the date at which this volume states the law no such day had been appointed.

UPDATE

502 Power to trade in function-related activities through a company

NOTES 3, 4--SI 2004/1705 replaced: Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009, SI 2009/2393.

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503. Regulation of trading powers.

The appropriate person¹ may by order impose conditions in relation to the exercise by a relevant authority² of a power to do anything for a commercial purpose³, or a power to do anything for such a purpose through a company⁴. In exercising such a power, a relevant authority must have regard to such guidance as the appropriate person may issue⁵. An order

under these provisions may be made in relation to: (1) all relevant authorities⁶; (2) particular relevant authorities⁷; or (3) particular descriptions of relevant authority⁸.

1 As to the meaning of 'appropriate person' see PARA 502 note 1.

2 Local Government Act 2003 s 96(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(a)). As to the meaning of 'relevant authority' see PARA 502 note 2; definition applied by the Local Government Act 2003 s 96(4) (substituted by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(c)).

3 Local Government Act 2003 s 96(1)(a).

4 Local Government Act 2003 s 96(1)(b). For these purposes 'Company' has the same meaning as in the Local Government and Housing Act 1989 Pt V (ss 67-73: see PARA 402 et seq): Local Government Act 2003 s 96(5). As from a day to be appointed s 96(5) is amended by the Local Government and Public Involvement in Health Act 2007 s 216(2), Sch 14 para 5(1), (5) so that 'company' has the same meaning as in the Local Government Act 2003 s 95 (see PARA 502 note 10). At the date at which this volume states the law no such day had been appointed.

5 Local Government Act 2003 s 96(2) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(a)).

6 Local Government Act 2003 s 96(3)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(b)).

7 Local Government Act 2003 s 96(3)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(b)).

8 Local Government Act 2003 s 96(3)(c) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (6)(a)). As to orders made under this section see the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004, SI 2004/1705 (amended by SI 2004/2307, SI 2004/2573, SI 2006/3102, SI 2007/385, SI 2007/2543); and the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006, SI 2006/979.

UPDATE

503 Regulation of trading powers

NOTE 8--SI 2004/1705 replaced: Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009, SI 2009/2393 (see PARA 502).

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(iv) Charging Powers

504. In general.

There are various specific statutory powers for local authorities to charge for certain services¹. A local authority can only levy a charge pursuant to express statutory authority or when such authority is necessarily implied (or implied by the clearest words)². The general power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions³ does not extend to the imposition of charges⁴.

The Secretary of State may make regulations enabling a charge to be imposed⁵, and local authorities also have the power to charge for discretionary services⁶.

1 See eg the Civic Restaurants Act 1947 (see PARA 599); the Public Libraries and Museums Act 1964 s 8 and Library Charges (England and Wales) Regulations 1991, SI 1991/2712 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 931); the Town and Country Planning Act 1990 s 303 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 458); the Environmental Protection Act 1990 ss 8, 47 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 166; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 695); and the Education Act 1996 s 512 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 542).

2 *McCarthy & Stone (Developments) Ltd v Richmond-upon-Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL.

3 le the power contained in the Local Government Act 1972 s 111: see PARA 462.

4 *McCarthy & Stone (Developments) Ltd v Richmond-upon-Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL.

5 See PARA 505.

6 See PARA 506.

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505. Power to allow charges.

The Secretary of State or the Welsh Ministers¹ may make regulations providing that a charge may be imposed² in respect of anything: (1) which is done by any relevant authority³ or by any relevant authority of a prescribed description⁴; (2) which is prescribed or falls within a prescribed description⁵; (3) in respect of which there is no power or duty to impose a charge apart from the regulations⁶; and (4) which is not done in the course of exercising an excepted function⁷. The regulations may be made as regards services rendered, documents issued, or any other thing done by an authority in pursuance of a power or duty, and may provide that the amount of any charge imposed is to be at the authority's discretion or is to be at its discretion subject to a maximum⁸.

In the case of an existing provision⁹, to the extent that the provision allows (as opposed to requires) a charge to be imposed in respect of anything which is done by relevant authorities (or any of them) and which is not done in the course of exercising an excepted function¹⁰, the Secretary of State may make regulations¹¹: (a) repealing the provision concerned to the extent that it so provides¹²; (b) amending the provision to that extent¹³; or (c) repealing the provision to that extent and replacing it with new provisions¹⁴.

Before exercising any power to make regulations¹⁵, the Secretary of State must consult such representatives of local government as appear to him to be appropriate¹⁶.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Local Government and Housing Act 1989 s 150(1). The regulations may include such provision as the Secretary of State sees fit as regards charges for which the regulations provide; and nothing in s 150(3)-(5) or s 190(1) is to prejudice this: s 150(2). The regulations may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State or the Welsh Ministers to be necessary or expedient: s 150(5). No regulations may be made under s 150 unless a draft of them has been laid before and approved by a resolution of each House of Parliament: s 150(6). As to the regulations that have been made under this provision see the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, SI 1993/407 (amended by SI 1996/1978, and SI 2006/1177); the Local Authorities (Charges for Land Searches) Regulations 1994, SI 1994/1885 (amended by SI 1996/525; revoked in relation to England by SI 2008/3248); the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996, SI 1996/1978; the

Local Authorities (Transport Charges) Regulations 1998, SI 1998/948 (amended by SI 2003/1615); the Houses in Multiple Occupation (Charges for Registration Schemes) Regulations 1998, SI 1998/1812; the London Local Authorities (Charges for Stopping Up Orders) Regulations 2000, SI 2000/1752; the Local Authorities (Charges for Specified Welfare Services) (England) Regulations 2003, SI 2003/907 (amended by SI 2006/217); the Business Improvement Districts (England) Regulations 2003, SI 2004/2443; the Local Authorities (England) (Charges for Property Searches) Regulations 2008, SI 2008/3248; and the Local Authorities (Charges for Property Searches) (Wales) Regulations 2009, SI 2009/369.

3 For the purposes of the Local Government and Housing Act 1989 ss 150, 151, each of the following is a relevant authority: (1) a county council; (2) a county borough council; (3) a district council; (4) a London borough council; (5) the Common Council of the City of London; (6) the Council of the Isles of Scilly; (7) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Service Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24); (8) an authority established under the Local Government Act 1985 s 10 (see PARA 17); (9) a joint authority established by Pt IV (ss 23-42) (see PARA 47 et seq); (10) an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities) (see PARA 51); (11) an authority or board constituted a port health authority at any time by an order under the Public Health (Control of Disease) Act 1984 s 2 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102); (12) a national park authority (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq); (13) a conservation board established under the Countryside and Rights of Way Act 2000 s 86 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 660); (14) the Broads Authority (see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq); (15) a joint planning board constituted for an area in Wales outside a national park by an order under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); and (16) the London Fire and Emergency Planning Authority (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**): Local Government and Housing Act 1989 s 152(2) (amended by the Police and Magistrates' Courts Act 1994 ss 43, 93, Sch 4 para 41, Sch 9 Pt I; the Environment Act 1995 ss 65, 78, 120, Sch 8 para 11, Sch 10 para 31, Sch 24; the Greater London Authority Act 1999 ss 328, 423, Sch 29 para 56, Sch 34 Pt VIII; the Countryside and Rights of Way Act 2000 Sch 14 para 7; the Fire and Rescue Service Act 2004 Sch 1 para 71; the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 paras 46, 48; and the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 3(7)). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

The Secretary of State may by order made by statutory instrument provide for any other body to be, or for a body to cease to be, a relevant authority for the purposes of the Local Government and Housing Act 1989 ss 150, 151; and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 152(4).

4 Local Government and Housing Act 1989 s 150(1)(a). For the purposes of ss 150, 151 'prescribed' means prescribed by the regulations concerned: s 152(5).

5 Local Government and Housing Act 1989 s 150(1)(b).

6 Local Government and Housing Act 1989 s 150(1)(c).

7 Local Government and Housing Act 1989 s 150(1)(d). For the purposes of ss 150, 151, the following are excepted functions: (1) functions relating to education in schools; (2) functions relating to the provision of a public library service; (3) functions relating to fire fighting, that is to say, the extinction of fire and the protection of life and property in case of fire; (4) functions relating to the registration of electors; (5) functions relating to the conduct of elections: s 152(1) (amended by the Police and Magistrates' Courts Act 1994 Sch 4 Pt I para 41, Sch 9 Pt I).

8 See the Local Government and Housing Act 1989 s 150(3). Where the regulations provide that a charge may not exceed a maximum amount they may provide for one amount, or a scale of amounts to cover different prescribed cases; and they may prescribe, as regards any amount, a sum or a method of calculating the amount: s 150(4).

9 For these purposes, an 'existing provision' is a provision of an Act passed before, or in the same session as, the Local Government and Housing Act 1989 (s 151(10)); and 'Act' includes a private or local Act (s 151(11)).

10 Local Government and Housing Act 1989 s 151(1). For these purposes, the charge may be expressed in terms of making a charge, paying a fee, or otherwise (s 151(3)(a)); and the charge may relate to services rendered, documents issued, or any other thing done by a relevant authority in pursuance of a power or duty (s 151(3)(b)). A charge does not fall within s 151(1) if it is one whose proceeds fall (or part of whose proceeds fall) to be paid into the Consolidated Fund, or if it is a charge amounting to local taxation: s 151(4) (amended by the Local Government etc (Scotland) Act 1994 s 180(1), Sch 13 para 161(10)). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

11 Regulations under the Local Government and Housing Act 1989 s 151(2) may not require the imposition of a charge (s 151(5)) but, subject to this, the regulations may include such provision as the Secretary of State sees fit as regards charges (s 151(6)). The regulations may provide that the amount of a charge (if imposed) is to be at the authority's discretion or to be at its discretion subject to a maximum: s 151(7). Where the regulations provide that a charge may not exceed a maximum amount, they may: (1) provide for one amount, or a scale of amounts to cover different prescribed cases; (2) prescribe, as regards any amount, a sum or a method of calculating the amount: s 151(8). The regulations (a) may confer discretion as to the amount in a case where an existing provision confers none, or vice versa; (b) may, in a case where an existing provision confers a discretion as to the amount, confer a different one; and (c) may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient: s 151(9). No regulations may be made under s 151 unless a draft of them has been laid before and approved by a resolution of each House of Parliament: see ss 150(6), 151(2). At the date at which this volume states the law no regulations had been made under s 151.

12 Local Government and Housing Act 1989 s 151(2)(a).

13 Local Government and Housing Act 1989 s 151(2)(b).

14 Local Government and Housing Act 1989 s 151(2)(c).

15 le under the Local Government and Housing Act 1989 s 150 or s 151.

16 Local Government and Housing Act 1989 s 152(6).

UPDATE

505 Power to allow charges

NOTE 2--SI 1994/1885 replaced, in relation to Wales, by the Local Authorities (Charges for Property Searches) (Wales) Regulations 2009, SI 2009/369. See *One Search Direct Holdings Ltd (formerly SPH Holdings Ltd) (t/a OneSearch Direct) v York City Council* [2010] EWHC 590 (Admin), [2010] All ER (D) 198 (Mar).

NOTE 3--Local Government and Housing Act 1989 s 152(2) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81.

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506. Power to charge for discretionary services.

Subject to certain conditions¹ a relevant authority² may charge a person for providing a service to him if the authority is authorised, but not required, by an enactment³ to provide the service to him, and he has agreed to its provision⁴.

The appropriate person⁵ may by order disapply the above power⁶ in relation to:

- 482 (1) particular descriptions of relevant authority or particular relevant authorities⁷;
and
- 483 (2) the provision of a particular kind of service by all relevant authorities,
particular relevant authorities, or particular descriptions of relevant authority⁸.

1 le subject to the Local Government Act 2003 s 93(2)-(8): see note 4.

2 For these purposes 'relevant authority' means (1) a best value authority; (2) a parish council; (3) a parish meeting of a parish which does not have a separate parish council; or (4) a community council: ss 93(9), 94(3)

(both added by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (3)(b), (4)(c)). As to the meaning of 'best value authorities' see PARA 502 note 2. As to parish councils see PARA 27 et seq. As to community councils see PARA 41 et seq.

3 For these purposes 'enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978): Local Government Act 2003 s 93(8).

4 Local Government Act 2003 s 93(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (3)(a)).

The Local Government Act 2003 s 93(1) does not apply if the authority: (1) has power apart from s 93 to charge for the provision of the service; or (2) is expressly prohibited from charging for the provision of the service: s 93(2). The following must be disregarded for the purposes of head (2): (a) the Local Government Act 1972 s 111(3) (subsidiary powers of local authorities not to include power to raise money: see PARA 462); (b) the Greater London Authority Act 1999 s 34(2) (corresponding provision for Greater London Authority: see **LONDON GOVERNMENT**); and (c) the Local Government Act 2000 s 3(2) (well-being powers not to include power to raise money: see PARA 463): Local Government Act 2003 s 93(7). The power under s 93(1) is subject to a duty to secure that, taking one financial year with another, the income from charges under s 93(1) does not exceed the costs of provision: s 93(3). The duty under s 93(3) applies separately in relation to each kind of service: s 93(4). Within the framework set by s 93(3) and (4), a relevant authority may set charges as it thinks fit and may, in particular: (i) charge only some persons for providing a service; (ii) charge different persons different amounts for the provision of a service: s 93(5) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (3)(a)). In carrying out functions under s 93, a relevant authority must have regard to such guidance as the appropriate person may issue: s 93(6) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (3)(a)).

5 As to the meaning of 'appropriate person' see PARA 502 note 1.

6 Local Government Act 2003 s 94(1). The power under the Local Government Act 2003 s 94(1) includes power to disapply for a particular period: s 94(2). As to orders made under s 94 see the Local Authorities (England) (Charges for Property Searches) (Disapplication) Order 2008, SI 2008/2909; and the Local Authorities (Charges for Property Searches) (Disapplication) (Wales) Order 2009, SI 2009/55.

7 Local Government Act 2003 s 94(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (4)(a)).

8 Local Government Act 2003 s 94(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (4)(b)).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(2) CONTRACTS, TRADING AND CHARGING/(v) Power to Modify Enactments/507. Power to modify enactments in connection with charging or trading.

(v) Power to Modify Enactments

507. Power to modify enactments in connection with charging or trading.

If it appears to the Secretary of State that an enactment¹ (whenever passed or made)² prevents or obstructs relevant authorities³ (1) charging by agreement for the provision of a discretionary service⁴; or (2) doing for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions⁵, he may by order amend, repeal, revoke or disapply the enactment⁶. The Secretary of State may by order amend, repeal, revoke or disapply an enactment (whenever passed or made)⁷ which makes in relation to a relevant authority provision for, or in connection with, power to charge for the provision of a discretionary service⁸. The power⁹ to amend or disapply an enactment includes power to amend or disapply an enactment for a particular period¹⁰. An order under these provisions may be made in relation to (a) all relevant authorities; (b) particular relevant authorities; or (c) particular descriptions of relevant authority¹¹. In exercising the above powers¹², the Secretary of State must not make provision which has effect in relation to Wales unless he has consulted

the Welsh Ministers¹³. The Welsh Ministers may submit proposals to the Secretary of State that the above powers¹⁴ should be exercised in relation to Wales in accordance with those proposals¹⁵. No order may be made under the above provisions unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, each House of Parliament¹⁶.

Before making an order to modify an enactment in connection with charging or trading¹⁷, the Secretary of State must consult such relevant authorities as appear to him to be likely to be affected by his proposals¹⁸, and such other persons as appear to him to be representative of interests likely to be so affected¹⁹. If, following any necessary consultation²⁰, the Secretary of State proposes to make such an order, he must lay before each House of Parliament a document which²¹:

- 484 (i) explains his proposals²²;
- 485 (ii) sets them out in the form of a draft order²³;
- 486 (iii) gives details of any consultation²⁴; and
- 487 (iv) where the proposals include provision which has effect in relation to Wales, sets out the views of the Welsh Ministers²⁵.

1 For these purposes 'enactment' includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978): Local Government Act 2003 s 97(11).

2 Other than the Local Government Act 2003 s 93(2) (see PARA 506) or 95(2) (see PARA 502).

3 For these purposes 'relevant authority' means: (1) a best value authority; (2) a parish council; (3) a parish meeting of a parish which does not have a separate parish council; or (4) a community council: Local Government Act 2003 ss 97(11), 98(7) (definition in s 97(11), and s 98(7) added by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(c), (8)(b)). As to the meaning of 'best value authorities' see PARA 502 note 2. As to parish councils see PARA 27 et seq. As to community councils see PARA 41 et seq.

4 For these purposes 'discretionary service', in relation to a relevant authority, means a service which the authority is authorised, but not required, to provide: Local Government Act 2003 s 97(11) (definition amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(b)).

5 For these purposes 'ordinary functions', in relation to a relevant authority, means functions of the authority which are not functions under s 95 (see PARA 502): s 97(11) (definition amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(b)).

6 Local Government Act 2003 s 97(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(a)). An order under head (2) in the text may be made in relation to (1) all things authorised to be done for the purpose of carrying on a particular function; (2) particular things authorised to be done for that purpose; or (3) particular descriptions of thing authorised to be so done: s 97(5). An order under head (2) in the text may not be used to authorise a relevant authority to do in relation to a person anything which it is required to do in relation to him under its ordinary functions: s 97(6).

7 Other than the Local Government Act 2003 s 93: see PARA 506.

8 Local Government Act 2003 s 97(2) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(b)).

9 Ie under the Local Government Act 2003 s 97(1) or (2): see the text and notes 1-8.

10 Local Government Act 2003 s 97(3).

11 Local Government Act 2003 s 97(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (7)(a), (b)).

12 Ie the power under the Local Government Act 2003 s 97(1) or (2): see the text and notes 1-8.

13 Local Government Act 2003 s 97(7A) (s 97(7A)-(7C) added by the Local Government and Public Involvement in Health Act 2007 s 141(2)(a)). In exercising a power under the Local Government Act 2003 s 97(1) or (2) (see the text and notes 1-8), the Secretary of State (1) must not amend, or repeal or disapply,

Measures or Acts of the National Assembly for Wales without the consent of the National Assembly for Wales; (2) must not amend, or revoke or disapply, subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998) without the consent of the Welsh Ministers: Local Government Act 2003 s 97(7B) (as so added). Section 97(7B) does not apply to the extent that the Secretary of State is making incidental or consequential provision: s 97(7C) (as so added). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

14 le the power under the Local Government Act 2003 s 97(1) or (2): see the text and notes 1-8.

15 Local Government Act 2003 s 97(8) (amended by Local Government and Public Involvement in Health Act 2007 s 141(2)(b)).

16 Local Government Act 2003 s 97(9). An order under s 97 which is made only for the purpose of amending an earlier order under s 97 so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description, is subject to annulment in pursuance of a resolution of either House of Parliament: s 97(10).

In preparing a draft under s 97(9) the Secretary of State must consider any representations made during the period mentioned in s 98(3) (see note 21) (s 98(5)), and the draft must be accompanied by a statement of the Secretary of State giving details of any such representations and any changes made to the proposals contained in the document laid before Parliament under s 98(2) (see note 21) (s 98(6)).

17 le an order under the Local Government Act 2003 s 97: see the text and notes 1-16.

18 Local Government Act 2003 s 98(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 3(1), (8)(a)).

19 Local Government Act 2003 s 98(1)(b).

20 le consultation under the Local Government Act 2003 s 98(1) (see the text and notes 17-19), or where the proposals include provision which has effect in relation to Wales, consultation under s 97(7A) (as substituted: see the text and note 13).

21 Local Government Act 2003 s 98(2) (amended by the Local Government and Public Involvement in Health Act 2007 ss 141(30(a), 144(2), Sch 8 Pt 2 para 25(1), (3)).

Where a document relating to proposals is laid before Parliament under the Local Government Act 2003 s 98(2), no draft of an order under s 97 to give effect to the proposals (with or without modification) may be laid before Parliament until after the expiry of the period of sixty days beginning with the day on which the document was laid: s 98(3). In calculating this period no account is taken of any time during which Parliament is dissolved or prorogued, or either House is adjourned for more than four days: s 98(4).

22 Local Government Act 2003 s 98(2)(a).

23 Local Government Act 2003 s 98(2)(b).

24 Local Government Act 2003 s 98(2)(c).

25 Local Government Act 2003 s 98(2)(d) (amended by the Local Government and Public Involvement in Health Act 2007 s 141(3)(b)).

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POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(i) In general/508.
Powers of local authorities in relation to land.

(3) LAND TRANSACTIONS

(i) In general

508. Powers of local authorities in relation to land.

Local authorities have a variety of powers to acquire, appropriate and dispose of land. General powers are contained in the Local Government Act 1972¹, the Local Authorities (Land) Act 1963² and the Local Government, Planning and Land Act 1980³. Local authorities have a range of specific powers in relation to land including the acceptance of gifts of land⁴, the surveying of land⁵ and the power to obtain the particulars of persons interested in land⁶.

In addition, local authorities have significant powers, functions and duties in relation to planning⁷, housing⁸ and economic regeneration through regional development agencies⁹.

- 1 As to powers of local authorities under the Local Government Act 1972 see PARAS 509, 513-520.
- 2 As to powers of local authorities under the Local Authorities (Land) Act 1963 see PARAS 521-522.
- 3 As to powers of local authorities under the Local Government, Planning and Land Act 1980 see PARAS 525-527.
- 4 As to the acceptance of gifts of land see PARA 528.
- 5 As to powers to survey land see PARA 532.
- 6 As to powers to obtain particulars of persons interested in land see PARA 533.
- 7 As to planning see PARA 523; and **TOWN AND COUNTRY PLANNING**.
- 8 As to housing see PARA 524; and **HOUSING**.
- 9 As to regional development agencies see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988 et seq.

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(ii) Powers to Deal with Land

A. PRINCIPAL COUNCILS

509. Acquisition of land by agreement.

For the purposes of any of its functions under the Local Government Act 1972 or any other enactment¹ or for the benefit, improvement or development of its area², a principal council³ may acquire by agreement any land⁴, whether situated inside or outside its area⁵. A principal council may acquire by agreement any land for any purpose for which it is authorised⁶ to acquire land, notwithstanding that the land is not immediately required for the purpose for which it was acquired⁷. Until it is required for the purposes for which it was acquired, the land may be used for the purposes of any of the council's functions⁸.

1 Local Government Act 1972 s 120(1)(a). For these purposes 'enactment', except where the context otherwise requires, is to be construed as references to that enactment as amended, extended or applied by or under any other enactment, including any enactment contained in the Local Government Act 1972: s 270(5). See *Truro Corp v Rowe* [1902] 2 KB 709, CA. As to local authority functions see PARA 579 et seq.

2 Local Government Act 1972 s 120(1)(b). As to the construction of 'benefit, improvement or development' see *R v Somerset County Council, ex p Fewings* [1995] 1 All ER 513, 92 LGR 674 (affd [1995] 3 All ER 20, 93 LGR 515, CA). As to the acquisition and development of land for planning purposes see PARA 523; and **COMPULSORY ACQUISITION OF LAND; TOWN AND COUNTRY PLANNING**. As to the powers of councils to acquire land for public access and to provide country parks and commons see vol 78 (2010) PARAS 566, 568, 633.

3 As to the meaning of 'principal council' see PARA 23.

4 For the purposes of the Local Government Act 1972 s 120, any reference to acquisition by agreement is a reference to acquisition for money or money's worth, as purchaser or lessee: s 120(5). 'Land' includes any interest in land and any easement or right in, to or over land: s 270(1).

5 Local Government Act 1972 s 120(1). As to the acquisition of land by agreement see also the Town and Country Planning Act 1959 s 22 (amended by the Statute Law Revision Act 1960; the Mineral Workings Act 1985 Sch 2).

Where a council is authorised to acquire land by agreement under the Local Government Act 1972 s 120, the provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (with the exception of s 31) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 661 et seq) are, so far as applicable, to apply; and in Pt I as so applied the word 'land' has the same meaning as assigned to it by the Local Government Act 1972 (see note 4): s 120(3).

The Local Government (Miscellaneous Provisions) Act 1976 provides for a procedure for the incorporation of either the Lands Clauses Consolidation Act 1845 s 68 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718) or the Compulsory Purchase Act 1965 s 10 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718) in relation to purchases agreed before 1 April 1974: see the Local Government (Miscellaneous Provisions) Act 1976 s 14.

Where two or more councils acting together would have power to acquire any land by agreement by virtue of the Local Government Act 1972 s 120, nothing in any enactment is to prevent one of those councils from so acquiring the land on behalf of both or all of them in accordance with the arrangements made between them, including the arrangements as to the subsequent occupation and use of the land: s 120(4). A council purchasing land by agreement may enter into covenants with the vendor restricting the erection of buildings on the land, provided the restrictions do not prevent the use of the land for the particular purposes of acquisition: *Stourcliffe Estates Co Ltd v Bournemouth Corp* [1910] 2 Ch 12, 8 LGR 595, CA.

Nothing in the Local Government Act 1972 Pt VII (ss 111-146A) or Pt VIII (ss 147-178) affects, or empowers a local authority to act otherwise than in accordance with any provision relating to any dealing in land by a local authority or the application of capital money arising from any such dealing contained in, or in any instrument made under, any of the following enactments: (1) the Technical and Industrial Institutions Act 1892 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 937); (2) the Military Lands Acts 1892-1903 (see **ARMED FORCES**); (3) the Allotments Acts 1908-1950 (see **AGRICULTURAL LAND**); (4) the Small Holdings and Allotments Acts 1908-1931 (see **AGRICULTURAL LAND**); (5) the Ancient Monuments and Archaeological Areas Act 1979 (see **OPEN SPACES AND COUNTRYSIDE**); (6) the Land Settlement (Facilities) Act 1919 s 28 (see **AGRICULTURAL LAND** vol 1 (2008) PARAS 546, 552); (6) the Agriculture Act 1970 Pt III (ss 37-65) (see **AGRICULTURAL LAND**); (7) any local Act (including an Act confirming a provisional order); and (8) the Housing Act 1985 (see **HOUSING**): Local Government Act 1972 s 131(1)(b), (2) (s 131(2) amended by the Housing Act 1974 s 43(6); the Ancient Monuments and Archaeological Areas Act 1979 Sch 4 para 13; the Housing Act 1980 Sch 25 para 23; the Civil Aviation (Amendment) Act 1982 Sch 2; the Housing (Consequential Provisions) Act 1985 Sch 1 Pt I, Sch 2 para 23; and the Transport and Works Act 1992 Sch 4 Pt I).

For the purposes of the Local Government Act 1972 s 131, 'local authority' includes a parish meeting and the parish trustees of a parish: s 131(4). As to parish meetings see PARA 34. As to parish trustees see PARA 34. As to the meaning of 'local authority' generally see PARA 23.

6 Ie under the Local Government Act 1972 or any other enactment.

7 Local Government Act 1972 s 120(2).

8 Local Government Act 1972 s 120(2).

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510. Compulsory acquisition of land.

For any purpose for which it is authorised¹ to acquire land² a principal council³ may be authorised by the minister⁴ concerned with that purpose to purchase compulsorily any land, whether situated inside or outside its area⁵. A council may not, however, purchase land compulsorily: (1) for the benefit, improvement or development of its area⁶; (2) for the purpose

of any of its functions under the Local Authorities (Land) Act 1963⁷; or (3) for any purpose in relation to which its power of acquisition is by any enactment expressly limited to acquisition by agreement⁸. Where one or more councils propose to acquire any land for more than one purpose, the minister or ministers whose authorisation is required for the exercise of that power is not to be concerned to make any apportionment between those purposes⁹, nor, where there is more than one council, between those councils¹⁰.

1 le authorised by the Local Government Act 1972 or any other public general Act: Local Government Act 1972 s 121(1).

2 As to the meaning of 'land' see PARA 509 note 4. As to the compulsory acquisition of rights over land see PARA 511.

3 As to the meaning of 'principal council' see PARA 23.

4 In relation to any purpose in respect of which the Welsh Ministers are concerned, the reference in the Local Government Act 1972 s 121(1) to 'the minister concerned with that purpose' has effect as if it were a reference to the Welsh Ministers, and following references in s 121 to 'minister' or 'ministers' are to be construed accordingly: see PARA 97.

5 Local Government Act 1972 s 121(1). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) applies in relation to the compulsory purchase of land in pursuance of the Local Government Act 1972 s 121(1): s 121(4) (amended by the Acquisition of Land Act 1981 Sch 4 para 1, Sch 6 Pt I). As to limitations on the powers of local authorities in relation to land see PARA 509 note 5. As to the procedure for the compulsory acquisition of land see PARA 512; and **COMPULSORY ACQUISITION OF LAND**.

6 Local Government Act 1972 s 121(2)(a). See also s 120(1)(b); and PARA 509 note 2. However, the Town and Country Planning Act 1990 makes provision for the compulsory purchase of land for a range of planning purposes: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934 et seq. Councils may also acquire compulsorily: (1) any listed building in a state of disrepair (see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1154-1155); (2) land which is, or is likely to become, derelict, neglected or unsightly (see the National Parks and Access to the Countryside Act 1949 s 89; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 647); (3) land in clearance areas (see the Housing Act 1985 s 290; and **HOUSING** vol 22 (2006 Reissue) PARA 427); (4) land in housing renewal areas (see the Local Government and Housing Act 1989 s 93(2); and **HOUSING** vol 22 (2006 Reissue) PARA 592); and (5) land needed to provide or improve a highway (see the Town and Country Planning Act 1990 s 254; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 797).

7 Local Government Act 1972 s 121(2)(b). As to the functions of local authorities under the Local Authorities (Land) Act 1963 see PARAS 521-522.

8 Local Government Act 1972 s 121(2)(c). As to acquisition by agreement see PARA 509 note 4.

9 In such circumstances, the purposes must be treated as a single purpose and the compulsory acquisition must be treated as requiring the authorisation of the minister or the joint authorisation of the ministers concerned with those purposes: Local Government Act 1972 s 121(3)(a).

10 Local Government Act 1972 s 121(3). Where there is more than one council concerned, the councils may nominate one of them to acquire the land on behalf of them all and the council so nominated must accordingly be treated as the acquiring authority for the purposes of any enactment relating to the acquisition: s 121(3)(b).

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511. Compulsory acquisition of rights over land.

A local authority¹ which may be authorised by a Minister of the Crown or Welsh Ministers² by means of a compulsory purchase order³ to purchase any land compulsorily for any purpose,

may be authorised by means of such an order to purchase compulsorily for that purpose such new rights⁴ over the land as are specified in the order⁵.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the Minister of the Crown and the Welsh Ministers see PARAS 96-97.

3 For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 13, 'compulsory purchase order' has the same meaning as in the Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 557 note 1); and the provisions of Sch 3 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 606 et seq) apply to the compulsory purchase of rights by virtue of the Local Government (Miscellaneous Provisions) Act 1976 s 13(1): s 13(5) (substituted by the Acquisition of Land Act 1981 Sch 4 para 26). As to the compulsory acquisition of land see PARA 510.

4 For the purposes of Local Government (Miscellaneous Provisions) Act 1976 s 13(1), 'new rights' means rights which are not in existence when the order specifying them is made: s 13(1). As to the compulsory purchase of rights only over land see *Sovmots Investments Ltd v Secretary of State for the Environment*, [1979] AC 144, [1977] 2 All ER 385, HL; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 532.

5 Local Government (Miscellaneous Provisions) Act 1976 s 13(1). The Compulsory Purchase Act 1965 (see **COMPULSORY ACQUISITION OF LAND**) has effect with the modifications necessary to make it apply to the compulsory purchase of rights by virtue of the Local Government (Miscellaneous Provisions) Act 1976 s 13(1) as it applies to the compulsory purchase of land so that in appropriate contexts references in the Compulsory Purchase Act 1965 to land are to be read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable, according to the requirements of the particular context: Local Government (Miscellaneous Provisions) Act 1976 s 13(2) (amended by the Acquisition of Land Act 1981 Sch 6 Pt I).

Without prejudice to the generality of the Local Government (Miscellaneous Provisions) Act 1976 s 13(2), in relation to the purchase of rights in pursuance of s 13(1): (1) the Compulsory Purchase Act 1965 Pt I (ss 1-32) (see **COMPULSORY ACQUISITION OF LAND**) has effect with certain modifications (see the Local Government (Miscellaneous Provisions) Act 1976 Sch 1 Pt II); and (2) the enactments relating to compensation for the compulsory purchase of land apply with the necessary modifications as they apply to such compensation: s 13(3) (amended by the Acquisition of Land Act 1981 Sch 6 Pt I).

Nothing in these provisions authorises the purchase of any rights by an authority for a purpose for which there is power by virtue of the Highways Act 1980 s 250 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 85) to authorise the authority to acquire the rights: Local Government (Miscellaneous Provisions) Act 1976 s 13(4) (amended by the Highways Act 1980 Sch 24).

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512. Procedures and rules for compulsory acquisition, compensation and use of land.

The rules and procedures for the compulsory acquisition of land¹ are contained in various statutory provisions². These include provision for the authorisation of compulsory acquisitions³, the procedure to be followed for compulsory acquisitions⁴ and claims for compensation⁵. Provision is also made as to the use that may be made of land⁶. Compensation may be payable for disturbance from the land acquired⁷.

1 As to the compulsory acquisition of land see PARA 510. As to the compulsory acquisition of rights over land see PARA 511. See further **COMPULSORY ACQUISITION OF LAND**.

2 See eg the Lands Tribunal Act 1949; the Land Compensation Act 1961; the Compulsory Purchase Act 1965; the Land Compensation Act 1973; the Local Government, Planning and Land Act 1980; the Acquisition of Land Act 1981; the Compulsory Purchase (Vesting Declarations) Act 1981; and **COMPULSORY ACQUISITION OF LAND**.

3 As to the authorisation of compulsory acquisitions see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

4 As to the procedure for compulsory acquisitions see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 549 et seq.

5 As to claims for compensation arising from compulsory acquisitions see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 715 et seq.

6 As to the use of land acquired through compulsory acquisition see **COMPULSORY ACQUISITION OF LAND**.

7 As to compensation for disturbances from land acquired through compulsory acquisitions see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 814 et seq.

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513. Appropriation of land.

A principal council¹ may appropriate for any purpose for which the council is authorised to acquire land by agreement² any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation³. However, any such appropriation is subject to the rights of other persons in, over or in respect of the land concerned⁴. A principal council's power to appropriate land is subject to limitations in relation to commons⁵ and open spaces⁶. Where land has been acquired under the Local Government Act 1972 or any other enactment or any statutory order incorporating the Lands Clauses Acts⁷ and is subsequently appropriated under these provisions⁸, any work executed on the land after the appropriation has been effected is to be treated for the purposes of the Lands Clauses Consolidation Act 1845⁹ and the Compulsory Purchase Act 1965¹⁰ as having been authorised by the enactment or statutory order under which the land was acquired¹¹. Where an appropriation of land occurs, such adjustments of accounts as are necessary must be made¹².

1 As to the meaning of 'principal council' see PARA 23.

2 Ie under the Local Government Act 1972 or any other enactment: see PARA 509. As to the meaning of 'land' see PARA 509 note 4.

3 See the Local Government Act 1972 s 122(1). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the appropriation of land see also the Town and Country Planning Act 1959 s 23 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947). Apart from statute, the appropriation by a council of land which it has acquired for one purpose to another purpose which is inconsistent with the original purpose is ultra vires, and will be restrained unless the appropriation is merely for a temporary purpose: see *A-G v Hanwell UDC* [1900] 2 Ch 377, CA; *A-G v Pontypridd UDC* [1906] 2 Ch 257, 4 LGR 791, CA; *A-G v Westminster City Council* [1924] 2 Ch 416, 22 LGR 506, CA; *A-G v Teddington UDC* [1898] 1 Ch 66; *A-G v Sunderland Corpn* [1929] 2 Ch 436 (affd [1930] 1 Ch 168, CA). The local authority is the sole judge of the question whether or not any land is still required for the purposes for which it is held immediately before the appropriation, and its decision cannot be challenged in the absence of bad faith: see *Dowty Boulton Paul Ltd v Wolverhampton Corpn (No 2)* [1973] Ch 94, [1972] 2 All ER 1073; affd [1976] Ch 13, [1973] 2 All ER 491, CA.

In considering whether to use its powers of appropriation, a local authority can have regard to the fact that suitable development of the land will not proceed for commercial purposes: *R v Leeds County Council, ex p Leeds Industrial Co-operative Society Ltd* (1996) 160 JP Rep 673. See also *Windsor and Maidenhead Royal Borough Council v Brandrose Investments Ltd* [1981] 3 All ER 38, [1981] 1 WLR 1083 (affd [1983] 1 All ER 818, [1983] 1 WLR 509, CA); *Thames Water Authority v Elmbridge Borough Council* [1983] QB 570, [1983] 1 All ER 836; *Liverpool City Council v A-G* (1992) Times, 1 May; *Oldham Borough Council v A-G* [1993] Ch 210, [1993] 2 All ER 432, CA.

4 See the Local Government Act 1972 s 122(1).

5 A principal council may not appropriate any land under the Local Government Act 1972 s 122(1) (see the text and notes 1-4) which it may be authorised to appropriate under the Town and Country Planning Act 1990 s 229 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947) unless: (1) the total of the land appropriated in any particular common, or fuel or field garden allotment does not in the aggregate exceed 250 square yards; and (2) before appropriating the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed appropriation which may be made to it: Local Government Act 1972 s 122(2) (amended by the Local Government, Planning and Land Act 1980 Sch 23 para 12(1), Sch 34 Pt XIII; and the Planning (Consequential Provisions) Act 1990 Sch 2 para 28(1)). For these purposes, 'common, or fuel or field garden allotment' has the same meaning as in the Town and Country Planning Act 1990 (see s 229; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947): see the Local Government Act 1972 s 122(2) (as so amended). As to allotments generally see **AGRICULTURAL LAND**. As to commons generally see **COMMONS**.

The scope of objections that the council must consider include those directed to whether the land is required for its existing or previous purpose: *R v Bromsgrove District Council, ex p Norton and Kings* [1988] JPL 664.

6 A principal council may not appropriate any land under the Local Government Act 1972 s 122(1) (see the text and notes 1-4) consisting or forming part of an open space unless before appropriating the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed appropriation which may be made to it: s 122(2A) (s 122(2A), (2B) added by the Local Government, Planning and Land Act 1980 Sch 23 para 12(2)). Where land appropriated by the Local Government Act 1972 s 122(2A) is held for the purposes of the Public Health Act 1875 s 164 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 556) or in accordance with the Open Spaces Act 1906 s 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 577; **CREMATION AND BURIAL**), the land is by virtue of the appropriation to be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with statutory provisions: Local Government Act 1972 s 122(2B) (as so added). 'Open space' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 993): Local Government Act 1972 s 270(1).

7 As to the incorporation of the Lands Clauses Acts in empowering enactments see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 509 et seq.

8 Ie the Local Government Act 1972 s 122.

9 Ie the Lands Clauses Consolidation Act 1845 s 68: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718.

10 Ie the Compulsory Purchase Act 1965 s 10: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718.

11 Local Government Act 1972 s 122(4).

12 See the Town and Country Planning Act 1959 s 24; the Town and Country Planning Act 1990 s 229(5), (6); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947.

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514. Public meetings and assemblies.

A principal council¹ has the power to acquire or provide and furnish halls, offices and other buildings, whether within or without its area for the use of public meetings and assemblies².

¹ As to the meaning of 'principal council' see PARA 23.

² See the Local Government Act 1972 s 132; and PARA 621.

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515. Disposal of land.

A principal council¹ may, subject to the following provisions, dispose of land² held by it in any manner it wishes³. Except with the consent⁴ of the Secretary of State or Welsh Ministers⁵, a council is not to dispose of land, otherwise than by way of a short tenancy⁶, for a consideration less than the best that can reasonably be obtained⁷. A principal council may not dispose of any land consisting or forming part of an open space⁸ unless before disposing of the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and it considers any objections to the proposed disposal which may be made to it⁹.

1 As to the meaning of 'principal council' see PARA 23.

2 As to the meaning of 'land' see PARA 509 note 4. 'Dispose' includes the grant of a lease of land, an option to purchase or option to renew or take a lease: *Trustees of Chippenham Golf Club v North Wiltshire District Council* (1991) 64 P & CR 527; *R v Pembrokeshire County Council, ex p Coker* [1999] 4 All ER 1007. A disposal of land occurs when the conveyance of land has taken place and not on entry into the contract for sale: *R (on the application of Structadene Ltd) v Hackney London Borough Council* [2001] 2 All ER 225, [2001] LGR 204. As to the council's duty to dispose of the land for the best consideration available see *R v Lancashire County Council, ex p Telegraph Service Stations Ltd* (1989) 153 LG Rev 510; *R v Pembrokeshire County Council, ex p Coker* [1999] 4 All ER 1007.

3 Local Government Act 1972 s 123(1). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the disposal of land see also the Town and Country Planning Act 1959 s 26; and see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 651. As to the availability of judicial review in respect of a decision not to dispose of land see *R v Bolsover District Council, ex p Pepper* [2001] LGR 43. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

Nothing in the Local Government Act 1972 Pt VII (ss 111-146A) or Pt VIII (ss 147-178) is to authorise the disposal of any land by a local authority in breach of any trust, covenant or agreement which is binding upon it, excluding any trust arising solely by reason of the land being held as public walks or pleasure grounds or in accordance with the Open Spaces Act 1906 s 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 577; **CREMATION AND BURIAL**): Local Government Act 1972 s 131(1)(a). Nothing in Pt VII is to affect the operation of the Charities Act 1993 s 36 (restrictions on disposition of charity land: see **CHARITIES** vol 8 (2010) PARA 395) and in particular none of those provisions is to be treated as giving any such authority for a transaction as is referred to in s 36(9)(a) (certain statutorily authorised transactions not to require the sanction of the Charity Commission: see **CHARITIES** vol 8 (2010) PARA 395): Local Government Act 1972 s 131(3) (amended by the Charities Act 1992 Sch 6 para 6; the Charities Act 1993 Sch 6 para 12(1), (4); and the Charities Act 2006 Sch 8 para 55). Further, these powers do not justify a disposal which is constrained by any other requirements for consent as, for example, the Local Government Act 1988 Pt III (ss 24-26) which prevents authorities providing financial assistance to private landlords without consent: see **HOUSING** vol 22 (2006 Reissue) PARA 139. As to the acquisition and development of land for housing see PARA 523.

The Secretary of State may direct that, with effect from a date specified in the direction, a relevant authority may not without the written consent of a person or persons so specified dispose of any land if the consideration for the disposal exceeds £100,000: Local Government and Public Involvement in Health Act 2007 s 24(1)(a). For these purposes, 'relevant authority' means a local authority which by virtue of an order under s 7 (see PARA 61) or s 10 (see PARA 64) is to be dissolved; and which is specified, or of a description specified, in the direction: s 24(2). A person specified in the direction as a person whose consent is required may be the Secretary of State or such authority or other person as he thinks appropriate; and the direction may specify different persons in relation to different matters for which consent is required, and in relation to different relevant authorities or descriptions of relevant authority: s 24(4).

The Housing Act 1985 Pt 2 (ss 8-57) contains its own disposal code and provision for consents (see also Pt 5 (ss 118-188) governing the right to buy): see **HOUSING** vol 22 (2006 Reissue) PARA 305 et seq. The provision of assistance to a landlord for the purpose of encouraging private letting, by way of disposal of land also has its own code of consent: see the Housing Act 1988 Pt 3 (ss 60-92); and **HOUSING** vol 22 (2006 Reissue) PARA 349 et seq.

As to the power of disposal under the Town and Country Planning Act 1990 s 233 see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 948.

As to the transfer of local authority mortgages see the Local Government Act 1986 s 7; and **MORTGAGE** vol 77 (2010) PARA 372.

4 As to such consent see the Local Government Act 1972 s 128(1); and PARA 529. See also ODPM Circular 06/2003, Local Government Act 1972: General Disposal Consents (England) 2003 and Local Government Act 1972: General Disposal Consents (Wales) 2003.

5 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 For the purposes of the Local Government Act 1972 s 123, a disposal of land is a disposal by way of a short tenancy if it consists of: (1) the grant of a term not exceeding seven years; or (2) the assignment of a term which at the date of the assignment has not more than seven years to run: s 123(7).

7 Local Government Act 1972 s 123(2). See *R (on the application of Lemon Land Ltd) v Hackney London Borough Council* [2001] EWCH Admin 336, [2001] LGR 555, [2001] 21 EG 165.

8 'Open space' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 993); Local Government Act 1972 s 270(1).

9 Local Government Act 1972 s 123(2A) (s 123(2A), (2B) added by the Local Government, Planning and Land Act 1980 Sch 23 para 14). Where by virtue of the Local Government Act 1972 s 123(2A) a council disposes of land which is held for the purposes of the Public Health Act 1875 s 164 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 556) or in accordance with the Open Spaces Act 1906 s 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 577; **CREMATION AND BURIAL**), the land is by virtue of the disposal to be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with those statutory provisions: Local Government Act 1972 s 123(2B) (as so added).

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B. PARISH AND COMMUNITY COUNCILS

516. Acquisition of land by agreement.

For the purpose of any of its functions under the Local Government Act 1972 or any other public general Act¹ or for the benefit, improvement or development of its area², a parish or community council³ may acquire by agreement any land⁴, whether situated inside or outside its area⁵.

1 Local Government Act 1972 s 124(1)(a). As to the functions of local authorities see PARA 579 et seq.

2 Local Government Act 1972 s 124(1)(b). See also PARA 509 note 2.

3 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

4 For the purposes of the Local Government Act 1972 s 124, any reference to acquisition by agreement is a reference to acquisition for money or money's worth, as purchaser or lessee: s 124(3). As to the meaning of 'land' see PARA 509 note 4.

5 Local Government Act 1972 s 124(1). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the acquisition of land by agreement see also the Town and Country Planning Act 1959 s 22 (amended by the Statute Law Revision Act 1960; Mineral Workings Act 1985 Sch 2). Where a parish or community council is authorised to acquire land by agreement by virtue of the Local Government Act 1972 s 124, the provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (with the exception of s 31) (see **COMPULSORY ACQUISITION OF LAND**) are, so far as applicable, to apply; and in Pt I as so applied the word 'land' has the same meaning as assigned to it by the Local Government Act 1972: s 124(2).

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517. Compulsory acquisition of land.

Where a parish or community council¹ is unable to acquire suitable land² by agreement on reasonable terms³ for a purpose for which it is authorised to acquire land, other than for the benefit, improvement or development of its area⁴ or for any purpose in relation to which the power of acquisition is by an enactment expressly limited to acquisition by agreement⁵, it may represent the case to the council of the district⁶ in which the parish or community is situated⁷.

Where the district council is satisfied that suitable land for the purpose cannot be acquired on reasonable terms by agreement, it may be authorised by the Secretary of State or Welsh Ministers⁸ to purchase compulsorily the land or part of it⁹. The district council in making and the Secretary of State or Welsh Ministers in confirming an order for these purposes must have regard to the extent of land held in the neighbourhood by an owner and to the convenience of other property belonging to the same owner and must, as far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner¹⁰. The order is to be carried into effect by the district council but the land when acquired is to be conveyed to the parish or community council¹¹. Where a parish or community council makes representations to a district council with a view to the making of an order and the district council refuses to make an order¹² or does not make an order within eight weeks from the making of the representations or such longer period as may be agreed between the two councils¹³, the parish or community council may petition the Secretary of State or Welsh Ministers who may make the order¹⁴.

The district council may recover from the parish or community council the expenses incurred by it in connection with the acquisition of land¹⁵.

1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 As to the meaning of 'land' see PARA 509 note 4.

3 I.e. under the Local Government Act 1972 s 124: see PARA 516.

4 See the Local Government Act 1972 s 125(1)(a) (s 125 substituted by the Housing and Planning Act 1986 s 43). See also s 124(1)(b) and PARA 516.

5 Local Government Act 1972 s 125(1)(b) (as substituted: see note 4).

6 In relation to Wales, references in the Local Government Act 1972 s 125 to a district council are to be read as references to a principal council, and references to a district are to be read as references to a principal area: s 125(8) (added by the Local Government (Wales) Act 1994 Sch 15 para 28). As to the meanings of 'principal council' and 'principal area' see PARA 23.

7 Local Government Act 1972 s 125(1) (as substituted: see note 4). In the application of s 125 to a parish or community council for a group of parishes or communities, references to the parish or community are to be construed as references to the area of the group; and if different parts of the area of the group lie in different districts, references to the council of the district in which the parish or community is situated are to be construed as references to the councils of each of the districts acting jointly: s 125(7) (as so substituted). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to grouping of parishes or communities see PARAS 29, 43.

8 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

9 Local Government Act 1972 s 125(2) (as substituted: see note 4). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) applies in relation to compulsory acquisition under these provisions: Local Government Act 1972 s 125(2) (as so substituted).

10 Local Government Act 1972 s 125(3) (as substituted: see note 4).

11 Local Government Act 1972 s 125(4) (as substituted: see note 4). Accordingly, in construing for the purposes of s 125 and of the order any enactment applying in relation to the compulsory acquisition, the parish or community council or the district council, or the two councils jointly, must, as the case may require, be treated as the acquiring authority: s 125(4) (as so substituted).

12 Local Government Act 1972 s 125(6)(a) (as substituted: see note 4).

13 Local Government Act 1972 s 125(6)(b) (as substituted: see note 4).

14 Local Government Act 1972 s 125(6) (as substituted: see note 4). Section 125 and the provisions of the Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) are to apply as if the order had been made by the district council and confirmed by the Secretary of State or Welsh Ministers: Local Government Act 1972 s 125(6) (as so substituted).

15 Local Government Act 1972 s 125(5) (as substituted: see note 4).

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518. Appropriation of land.

Any land¹ belonging to a parish or community council² which is not required for the purposes for which it was acquired³ or has since been appropriated may be appropriated by the council for any other purpose for which it is authorised⁴ to acquire land by agreement⁵. In the case of a parish which does not have a separate parish council, any land belonging to the parish meeting⁶ which is not required for the purposes for which it was acquired or has since been appropriated may be appropriated by the parish meeting for any other purpose approved by the Secretary of State⁷. However, any such appropriation of land by a parish or community council or by a parish meeting is subject to the rights of other persons in, over or in respect of the land concerned⁸. A parish or community council or parish meeting's power to appropriate land is subject to limitations in relation to commons⁹ and open spaces¹⁰.

Where land has been acquired under the Local Government Act 1972 or any other enactment or any statutory order incorporating the Lands Clauses Acts¹¹ and is subsequently appropriated¹², any work executed on the land after the appropriation has been effected is to be treated for the purposes of the Lands Clauses Consolidation Act 1845¹³ and the Compulsory Purchase Act 1965¹⁴ as having been authorised by the enactment or statutory order under which the land was acquired¹⁵. Where an appropriation of land occurs, such adjustments of accounts as are necessary must be made¹⁶.

1 As to the meaning of 'land' see PARA 509 note 4.

2 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

3 As to the acquisition of land by agreement see PARA 516; and as to the compulsory acquisition of land see PARA 517.

4 ie by the Local Government Act 1972 or any other public general Act.

5 Local Government Act 1972 s 126(1). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the appropriation of land see also the Town and Country Planning Act 1959 s 23 (amended by the Local Government, Planning and Land Act 1980 Sch 23 paras 3, 4, Sch 34 Pt VII).

6 As to parish meetings see PARA 34.

7 Local Government Act 1972 s 126(2). As to the Secretary of State and the Welsh Ministers see **PARAS 96-97**.

8 Local Government Act 1972 s 126(3).

9 A parish or community council or a parish meeting may not appropriate any land by virtue of the Local Government Act 1972 s 126 which it may be authorised to appropriate under the Town and Country Planning Act 1990 s 229 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) **PARA 947**) unless: (1) the total of the land appropriated in any particular common, or fuel or field garden allotment does not in the aggregate exceed 250 square yards; and (2) before appropriating the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed appropriation which may be made to it: Local Government Act 1972 s 126(4) (amended by the Local Government, Planning and Land Act 1980 Sch 23 para 17(1), Sch 34 Pt XIII; and the Planning (Consequential Provisions) Act 1990 Sch 2 para 28(1)). For these purposes, 'common, or fuel or field garden allotment' has the same meaning as in the Town and Country Planning Act 1990 s 229 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) **PARA 947**): Local Government Act 1972 s 126(4) (as so amended). As to allotments generally see **AGRICULTURAL LAND**. As to commons generally see **COMMONS**.

10 A parish or community council or a parish meeting may not by virtue of the Local Government Act 1972 s 126 appropriate any land consisting or forming part of an open space unless before appropriating the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed appropriation which may be made to it: s 126(4A) (s 126(4A), (4B) added by virtue of the Local Government, Planning and Land Act 1980 Sch 23 para 17(2)). Where land appropriated by the Local Government Act 1972 s 126(4A) is held for the purposes of the Public Health Act 1875 s 164 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARA 556**) or in accordance with the Open Spaces Act 1906 s 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARA 577**; **CREMATION AND BURIAL**), the land is by virtue of the appropriation to be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with those provisions: Local Government Act 1972 s 126(4B) (as so added). 'Open space' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) **PARA 993**): Local Government Act 1972 s 270(1).

11 As to the incorporation of the Lands Clauses Acts in empowering enactments see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) **PARA 509** et seq.

12 *Ie* under the Local Government Act 1972 s 122.

13 *Ie* the Lands Clauses Consolidation Act 1845 s 68: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) **PARA 718**.

14 *Ie* the Compulsory Purchase Act 1965 s 10: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) **PARA 718**.

15 Local Government Act 1972 s 126(6).

16 See the Town and Country Planning Act 1959 s 24; and the Town and Country Planning Act 1990 s 229(5), (6); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) **PARA 947**.

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519. Public meetings and assemblies.

A parish or community council¹ has the power to acquire or provide and furnish buildings to be used for public meetings and assemblies or contribute towards the expense incurred by any other parish or community council or any other person in acquiring or providing and furnishing such a building².

1 As to parish councils see **PARA 27** et seq; and as to community councils see **PARA 41** et seq.

2 See the Local Government Act 1972 s 133; and **PARA 621**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(ii) Powers to Deal with Land/B. PARISH AND COMMUNITY COUNCILS/520. Disposal of land.

520. Disposal of land.

A parish or community council¹, or the parish trustees² of a parish acting with the consent of the parish meeting³, may, subject to the following provisions, dispose of land⁴ in any manner⁵. Except with the consent of the Secretary of State or Welsh Ministers⁶, land is not to be disposed of otherwise than by way of a short tenancy⁷, for a consideration less than the best that can reasonably be obtained⁸. A parish or community council or the parish trustees of a parish may not dispose of any land consisting or forming part of an open space⁹ unless before disposing of the land notice of the intention to do so, specifying the land in question, is advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consideration is given to any objections to the proposed disposal which may be made to them¹⁰.

Capital money received in respect of a disposal of land held for charitable purposes is to be applied in accordance with any directions given under the Charities Act 1993¹¹.

1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 As to parish trustees see PARA 34.

3 As to parish meetings see PARA 34.

4 As to the meaning of 'land' see PARA 509 note 4. See also PARA 515 note 2.

5 See the Local Government Act 1972 s 127(1). As to limitations on the disposal of land see PARA 515 note 3; and as to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the disposal of land see also the Town and Country Planning Act 1959 s 26 (amended by the Town and Country Planning Act 1968 s Sch 11; the Local Government, Planning and Land Act 1980 Sch 23 paras 5, 6; the Housing (Consequential Provisions) Act 1985 Sch 1 Pt 1, Sch 2 para 3, Sch 4 para 3(1), (2); the Planning (Consequential Provisions) Act 1990 Sch 2 para 6). Provision is made for the application of moneys on the disposal of land: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 605 et seq.

6 As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to such consent see the Local Government Act 1972 s 128(1); and PARA 529. See ODPM Circular 06/2003, Local Government Act 1972: General Disposal Consents (England) 2003 and Local Government Act 1972: General Disposal Consents (Wales) 2003.

7 For the purposes of the Local Government Act 1972 s 127, a disposal of land is a disposal by way of a short tenancy if it consists: (1) of the grant of a term not exceeding seven years; or (2) of the assignment of a term which at the date of the assignment has not more than seven years to run: s 127(5).

8 Local Government Act 1972 s 127(2).

9 'Open space' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 993); Local Government Act 1972 s 270(1).

10 See the Local Government Act 1972 s 123(2A) (s 123(2A), (2B) added by the Local Government, Planning and Land Act 1980 Sch 23 para 14); and the Local Government Act 1972 s 127(3) (substituted by the Local Government, Planning and Land Act 1980 Sch 23 para 19). Where by virtue of the Local Government Act 1972 ss 123(2A), 127(3) a council disposes of land which is held for the purposes of the Public Health Act 1875 s 164 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 556) or in accordance with the Open Spaces Act 1906 s 10 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 577; **CREMATION AND BURIAL**), the land is by virtue of the disposal to be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with those provisions: Local Government Act 1972 s 123(2B) (as so added); s 127(3) (as so substituted).

11 Local Government Act 1972 s 127(4) (amended by the Charities Act 1993 Sch 6 para 12(3)). As to directions under the Charities Act 1993 see **CHARITIES**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/521. Power of local authorities to develop land.

(iii) Land Development and Miscellaneous Powers

521. Power of local authorities to develop land.

Under the Local Authorities (Land) Act 1963¹, a local authority² may, for the benefit or improvement of its area, erect³ any building and construct or carry out works on land⁴. A local authority may also repair, maintain and insure any building or works erected, constructed or carried out under this power, and generally may deal with any such building or works in a proper course of management⁵.

1 The Secretary of State or Welsh Ministers may by order repeal or amend any provision in any local Act passed before the Local Authorities (Land) Act 1963, or in any Act passed before the Local Authorities (Land) Act 1963 and confirming a provisional order, or in any order made under an Act before the passing of the Local Authorities (Land) Act 1963, where it appears to him or them that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of the Local Authorities (Land) Act 1963: s 9(1). The Secretary of State or Welsh Ministers must not make an order repealing or amending any provision in any local Act the Bill for which was promoted by a local authority, or by any authority, board, commissioners, trustees or other body whose functions under the local Act have become exercisable by a local authority, except on the application of that local authority: s 9(2). Before making such an order the Secretary of State or Welsh Ministers must consult with any local authority appearing to him or them to be concerned, not being a local authority by whom an application for the making of the order was made: s 9(3). Such an order may contain such transitional, supplemental or incidental provisions as appear to the Secretary of State or Welsh Ministers to be expedient, and must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 9(4). The Local Authorities (Land) Act 1963 refers to the Minister of Housing and Local Government whose functions have since been transferred to the Secretary of State: see PARA 96. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

Any increase attributable to the provisions of the Local Authorities (Land) Act 1963 in the sums payable out of moneys provided by Parliament under any other enactment must be paid out of moneys so provided: s 10.

2 As to the meaning of 'local authority' see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. The Local Authorities (Land) Act 1963 does not extend to Scotland or Northern Ireland: s 15(2).

3 'Erect' includes extend, alter and re-erect; and 'erection' is to be construed accordingly: Local Authorities (Land) Act 1963 s 14(1).

4 Local Authorities (Land) Act 1963 s 2(1). 'Land' includes any interest in land and any easement or right in, to or over land: s 14(1). No provision contained in s 2 is to be construed as authorising on the part of a local authority any act or omission which, apart from that provision, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the local authority by virtue of its constitution: s 12(1).

5 Local Authorities (Land) Act 1963 s 2(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/522. Power of local authorities to make advances.

522. Power of local authorities to make advances.

Where a local authority¹ is satisfied that it would be for the benefit or improvement of its area, it may advance money to any person for the purpose of enabling him: (1) to acquire land²; or (2) to erect³ any building or carry out any work on land⁴. Such an advance, together with interest on it, must be secured by a mortgage of the land in respect of which the advance is made⁵. The amount of the principal of an advance made under head (1) must not exceed nine-tenths of the value of the land⁶. The amount of the principal of an advance made under head (2) must not exceed nine-tenths of the value which it is estimated the mortgaged security will bear upon the completion of the building or other works in respect of which the advance is made⁷. Provision is made for advances to carry interest and for repayments⁸.

Where a local authority enters into an agreement with a person (the 'builder') whereby provision is made:

- 488 (a) authorising the builder to enter on land belonging to the local authority for the purpose of his erecting a building on it⁹;
- 489 (b) for the sale of the land to the builder, if the building is erected to the satisfaction of the local authority, or, as the agreement may provide, for the grant of a lease to him if the building is so erected¹⁰;
- 490 (c) for the local authority to advance money to the builder for the purpose of enabling him to erect the building¹¹;
- 491 (d) for securing that, on such a sale or, as the case may be, grant of a lease, any amount advanced as mentioned in head (c) will, together with the interest on it, be secured by a mortgage of the land¹²,

then the local authority may advance money to that person for the purpose mentioned in head (c) above¹³. The amount of the principal of such an advance must not exceed three-quarters of the amount which it is estimated will be the value of the security for the mortgage for which the agreement provides¹⁴.

1 As to the meaning of 'local authority' see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 Local Authorities (Land) Act 1963 s 3(1)(a) (s 3(1), (3) substituted by the Local Government (Miscellaneous Provisions) Act 1982 s 43). As to the meaning of 'land' see PARA 521 note 4.

3 As to the meaning of 'erect' see PARA 521 note 3.

4 Local Authorities (Land) Act 1963 s 3(1)(b) (as substituted: see note 2).

5 Local Authorities (Land) Act 1963 s 3(2).

6 Local Authorities (Land) Act 1963 s 3(3) (as substituted: see note 2).

7 Local Authorities (Land) Act 1963 s 3(3A) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 43).

8 An advance made under these provisions carries interest at a rate not less than 0.25% greater than that fixed by the Treasury in respect of loans to local authorities made on the date on which the terms of the advance are settled and for the same period as the advance, or at such other rate as the Secretary of State or Welsh Ministers may, in the case of the advance, fix: Local Authorities (Land) Act 1963 s 3(4) (amended by the National Loans Act 1968 Sch 6 Pt II). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

The mortgage deed securing such an advance must provide: (1) for repayments being made, subject to the provisions of head (3) and head (4), within such period, not exceeding 30 years, as may be specified in the deed (Local Authorities (Land) Act 1963 s 3(5)(a)); (2) for repayments being made, subject to head (3) and head (4), either by instalments of principal or by an annuity of principal and interest combined (s 3(5)(b)); (3) that, in the event of any of the conditions subject to which the advance is made not being complied with, the balance for

the time being unpaid becomes repayable on demand by the authority (s 3(5)(c)); (4) that the unpaid balance, or such part of it as may be provided for in the mortgage, may, in any event other than that specified in head (3), be repaid on any such conditions as may be specified in the mortgage after one month's written notice of intention to repay has been given to the authority (s 3(5)(d)); (5) where repayment is to be made by an annuity of principal and interest combined, for determining the amount by which the annuity or the life of the annuity is to be reduced when a part of the advance is paid off otherwise than by way of an instalment of the annuity (s 3(5)(e)).

9 Local Authorities (Land) Act 1963 s 4(1)(a).

10 Local Authorities (Land) Act 1963 s 4(1)(b).

11 Local Authorities (Land) Act 1963 s 4(1)(c).

12 Local Authorities (Land) Act 1963 s 4(1)(d).

13 Local Authorities (Land) Act 1963 s 4(1). The provisions of s 3(4), (5) (see note 8) apply to an advance made under s 4 as they apply to an advance made under s 3: s 4(3).

14 Local Authorities (Land) Act 1963 s 4(2).

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523. Acquisition and development of land for planning.

The town and country planning system is designed to regulate the development and use of land in the public interest¹. Local authorities have the power to purchase suitable land by agreement or compulsorily for planning purposes² and to appropriate, dispose of or develop land held for planning purposes³. Provision is also made for local authorities to purchase listed buildings on the refusal or conditional grant of listed building consent⁴.

1 As to town and country planning see **TOWN AND COUNTRY PLANNING**.

2 See the Town and Country Planning Act 1990 ss 226-231; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934 et seq. As to the powers of local authorities relating to the acquisition of land by agreement or compulsorily under the Local Government Act 1972 see PARAS 509-510.

3 See the Town and Country Planning Act 1990 ss 232-235; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 945 et seq.

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 32-37; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1139 et seq.

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524. Acquisition and development of land for housing.

Local authorities, in their capacity as local housing authorities¹, have a variety of powers and duties to acquire land and premises for the provision of accommodation². The general powers to acquire land, houses or buildings by agreement or compulsorily³ are supplemented by

powers relating to large-scale voluntary transfers⁴, the disposal of land to secure the provision of accommodation⁵ and the appropriation of land for housing purposes⁶. Local housing authorities have powers to deal with housing unfit for human habitation⁷ which include the acquisition of land for clearance⁸. In order to improve an area, a local housing authority may declare a renewal area⁹ and subsequently acquire land¹⁰.

1 As to local housing authorities see **HOUSING** vol 22 (2006 Reissue) PARA 9. Housing functions are also carried out by housing associations and similar bodies: see **HOUSING** vol 22 (2006 Reissue) PARA 11 et seq.

2 As to the statutory powers to acquire land and premises see the Acquisition of Land Act 1981; the Compulsory Purchase Act 1965; the Land Compensation Act 1961; the Housing Act 1985; and **COMPULSORY ACQUISITION OF LAND**. See also **HOUSING** vol 22 (2006 Reissue) PARA 580 et seq. As to the powers and duties to provide housing accommodation generally see ss 8-14; and **HOUSING** vol 22 (2006 Reissue) PARA 224 et seq.

3 See the Housing Act 1985 s 17; and **HOUSING** vol 22 (2006 Reissue) PARA 235. The powers of local authorities under the Housing Act 1985 are not affected by the general powers regarding the acquisition of land by agreement or compulsorily under the Local Government Act 1972 (see PARAS 509-510): see s 131(1), (2); and PARA 509. As to the compulsory acquisition of land generally see **COMPULSORY ACQUISITION OF LAND**.

4 See the Housing Act 1985 ss 32-34; and **HOUSING** vol 22 (2006 Reissue) PARA 305 et seq.

5 See the Housing Act 1985 s 31; and **HOUSING** vol 22 (2006 Reissue) PARA 304.

6 See the Housing Act 1985 s 19; and **HOUSING** vol 22 (2006 Reissue) PARA 193.

7 See the Housing Act 1985 Pt VI (ss 189-208), Pt VIII (ss 239-263), Pt IX (ss 264-323); and **HOUSING** vol 22 (2006 Reissue) PARA 359 et seq.

8 See the Housing Act 1985 s 290; and **HOUSING** vol 22 (2006 Reissue) PARA 427.

9 See the Local Government and Housing Act 1989 Pt VII (ss 89-100); and **HOUSING** vol 22 (2006 Reissue) PARA 503 et seq.

10 See the Housing Act 1985 s 93; and **HOUSING** vol 22 (2006 Reissue) PARA 592.

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525. Registration of underused or unused land held by public bodies.

The Secretary of State or the Welsh Ministers¹ may compile and maintain a register in such form as he or they may think fit of land which satisfies the following conditions²:

- 492 (1) that a freehold or leasehold interest in the land is owned by a body to whom these provisions apply³ or subsidiaries⁴ of such bodies⁵;
- 493 (2) that the land is situated in an area in relation to which these provisions operate⁶ or is not so situated but adjoins other land which is so situated and in which a freehold or leasehold interest is owned by such a body or a subsidiary of such a body⁷; and
- 494 (3) that in the opinion of the Secretary of State or the Welsh Ministers the land is not being used or not being sufficiently used for the purposes of the performance of the body's functions or of carrying on its undertaking⁸.

The Secretary of State or Welsh Ministers may enter on the register any such land satisfying these conditions as he or they may think fit⁹. The Secretary of State may also enter on the

register any Crown land¹⁰ situated in an area in relation to which these provisions are in operation or not so situated but adjoining other Crown land which is so situated¹¹. The information to be included in the register in relation to any land entered on it is to be such as the Secretary of State thinks or the Welsh Ministers think fit¹².

The Secretary of State or the Welsh Ministers must send to a council in respect of whose area a register is maintained a copy of that register¹³ and such amendments to it as he or they may from time to time consider appropriate¹⁴. A copy of a register sent to a council must be available at the council's principal office for inspection by any member of the public at all reasonable hours¹⁵.

The Secretary of State or the Welsh Ministers may direct a public body to whom these provisions apply to inform him or them whether the body or a subsidiary of the body holds a freehold or leasehold interest in land which is specified, or is of a description specified, in the direction¹⁶.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Local Government, Planning and Land Act 1980 s 95(1).

3 The provisions of the Local Government, Planning and Land Act 1980 Pt X (ss 93-100) apply to any of the following public bodies for the time being: a county council; a county borough council; a district council; a London borough council; the Common Council of the City of London; a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARAS 47-53); an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities: see PARA 51); the London Fire and Emergency Planning Authority; a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq); the Metropolitan Police Authority; a development corporation established under the New Towns Act 1981 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1322 et seq); an urban development corporation established under the Local Government, Planning and Land Act 1980 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq); a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (see **HOUSING** vol 22 (2006 Reissue) PARA 319 et seq); the Regulator of Social Housing; the Civil Aviation Authority; British Shipbuilders; the Coal Authority; the British Broadcasting Corporation; the Environment Agency; and statutory undertakers: Local Government, Planning and Land Act 1980 Sch 16 (amended by the New Towns Act 1981 Sch 12 para 28; the Local Government Act 1985 Sch 14 para 59, Sch 17; the Airports Act 1986 Sch 6 Pt I; the British Steel Act 1988 Sch 2 Pt I; the Education Reform Act 1988 Sch 13 Pt I; the Housing Act 1988 Sch 17 paras 28, 104; the Water Act 1989 Sch 25 para 61; the Broadcasting Act 1990 Sch 21; the Coal Industry Act 1994 Sch 9 para 25(2); the Local Government (Wales) Act 1994 Sch 16 para 59(5); the Police and Magistrates' Courts Act 1994 Sch 4 para 22; the Police Act 1996 Sch 7 para 1(2)(p); the Police Act 1997 Sch 6 para 16; the Government of Wales Act 1998 Sch 18 Pt VI; the Greater London Authority Act 1999 Sch 27 para 44(2), Sch 29 para 33; the Criminal Justice and Police Act 2001 Sch 6 para 38, Sch 7 Pt 5(1); the Local Government and Public Involvement in Health Act 2007 Sch 13 para 36(1), (6); the Housing and Regeneration Act 2008 Sch 8 paras 25, 31, Sch 9 para 6, Sch 16; and SI 1996/593).

For these purposes, 'statutory undertakers' means persons authorised by any enactment to carry on any railway, light railway, road transport, water transport, canal, inland navigation, dock or harbour undertaking or any undertaking for the supply of hydraulic power, provided that where any persons carry on a business to the main purpose of which any such undertaking is merely ancillary, those persons are not to be treated as statutory undertakers for these purposes: Local Government, Planning and Land Act 1980 Sch 16 (amended by the Gas Act 1986 Sch 9 Pt I; the Electricity Act 1989 Sch 18; and the Water Act 1989 Sch 25 para 61). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq. As to British Shipbuilders see **TRADE AND INDUSTRY** vol 97 (2010) PARA 844. As to the Coal Authority see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 52 et seq. As to the British Broadcasting Corporation see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 306 et seq. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

The Secretary of State or the Welsh Ministers may by order made by statutory instrument amend the Local Government, Planning and Land Act 1980 Sch 16: (1) by adding an entry naming a public body not for the time being specified in Sch 16; (2) by amending or deleting any entry for the time being contained in Sch 16: s 93(2). Before making an order under s 93(2), the Secretary of State or the Welsh Ministers must send written notification that he or they propose to make the order to any body to whom Pt X would apply by virtue of the order: s 93(4). Any body specified in a notification under s 93(4) may make representations to the Secretary of

State or the Welsh Ministers within a period of 42 days from the date of the notification: s 93(5). Where the Secretary of State has or the Welsh Ministers have sent a notification under s 93(4) to a body he or they may not make the order to which the notification relates until the expiration of the period specified in s 93(5): s 93(6). At the date at which this volume states the law no such order had been made.

4 'Subsidiary', in relation to a body to whom the Local Government, Planning and Land Act 1980 Pt X applies, means a wholly-owned subsidiary of that body; and 'wholly-owned subsidiary' has the meaning assigned to it by the Companies Act 1985 s 736(5)(b) (see **COMPANIES** vol 14 (2009) PARA 25): Local Government, Planning and Land Act 1980 s 100(1) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2).

As from a day to be appointed, 'subsidiary', in relation to a body to whom the Local Government, Planning and Land Act 1980 Pt X applies, is to mean: (1) if that body is a county council, county borough council, district council, London borough council, the Common Council of the City of London, the London Fire and Emergency Planning Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARAS 47-53) or an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51), a company under the control, or subject to the influence, of that body within the meaning of the Local Government and Housing Act 1989 Pt V (ss 67-73) (see PARA 402 et seq); and (2) in the case of any other body, a wholly-owned subsidiary of that body: Local Government, Planning and Land Act 1980 s 100(1) (substituted by the Local Government and Housing Act 1989 Sch 11 para 57; and amended by the Greater London Authority Act 1999 Sch 29 Pt I para 32; the Local Government and Public Involvement in Health Act 2007 Sch 13 para 36(1), (5); and SI 1996/1008). Further, as from a day to be appointed, this definition is again amended so as to provide that 'subsidiary', in relation to a body to whom the Local Government, Planning and Land Act 1980 Pt X applies, is to mean: (a) if that body is a county council, county borough council, district council, London borough council, the Common Council of the City of London, the London Fire and Emergency Planning Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARAS 47-53) or an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51), an entity which is under the control of that body, subject to its influence or jointly controlled by it and one or more other bodies; and (b) in the case of any other body, a wholly-owned subsidiary of that body: Local Government, Planning and Land Act 1980 s 100(1) (as so prospectively substituted and amended; and further prospectively amended by the Local Government and Public Involvement in Health Act 2007 Sch 14 para 3(1), (3)(a)). At the date at which this volume states the law, no such days had been appointed. The Secretary of State or the Welsh Ministers may by order define for the purposes of the Local Government, Planning and Land Act 1980 s 100(1)(a) the references to 'an entity under the control of' the body mentioned there; 'an entity subject to the influence of' that body; and 'an entity jointly controlled by that body and one or more other bodies: Local Government and Public Involvement in Health Act 2007 ss 217(1)(c), 218(b). At the date at which this volume states the law no such order had been made.

As from a day to be appointed, 'wholly-owned subsidiary' is to have the meaning assigned to it by the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25): Local Government, Planning and Land Act 1980 s 100(1A) (added by the Local Government and Housing Act 1989 Sch 11 para 57). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed, in relation to a body in England to whom the Local Government, Planning and Land Act 1980 Pt X applies, references to an entity under the control of the body, an entity subject to the influence of the body, and an entity jointly controlled by the body and one or more other bodies have the meanings given by order under the Local Government and Public Involvement in Health Act 2007 s 217: Local Government, Planning and Land Act 1980 s 100(1ZA), (ZB) added by the Local Government and Public Involvement in Health Act 2007 Sch 14 para 3(1), (3)(b)). As from a day to be appointed, in relation to a body in Wales to whom the Local Government, Planning and Land Act 1980 Pt X applies, those references have the meanings given by order under the Local Government and Public Involvement in Health Act 2007 s 218: Local Government, Planning and Land Act 1980 s 100(1ZB) (as so added). At the date at which this volume states the law no such days had been appointed.

5 Local Government, Planning and Land Act 1980 s 95(2)(a).

6 The Secretary of State or the Welsh Ministers may by order made by statutory instrument direct that the Local Government, Planning and Land Act 1980 Pt X is to come into operation in the area of any district council or London borough council specified in the order: s 94(1), (2). For the purposes of s 94, the City of London is to be treated as if it were a London borough and as if the Common Council of the City of London were the council of that borough: s 94(4). As to the orders that have been made under s 94(2) see the Local Government, Planning and Land Act 1980 (Commencement No 1) Order 1980, SI 1980/1871; the Local Government, Planning and Land Act 1980 (Commencement No 4) Order 1981, SI 1981/194; the Local Government, Planning and Land Act 1980 (Commencement No 6) Order 1981, SI 1981/1251; the Local Government, Planning and Land Act 1980 (Commencement No 7) Order 1981, SI 1981/1618; the Local Government, Planning and Land Act 1980 (Commencement No 8) Order 1983, SI 1983/94; and the Local Government, Planning and Land Act 1980 (Commencement No 9) Order 1984, SI 1984/1493.

7 Local Government, Planning and Land Act 1980 s 95(2)(b).

8 Local Government, Planning and Land Act 1980 s 95(2)(c).

9 Local Government, Planning and Land Act 1980 s 95(3). The following provisions have effect as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. Where land is entered on a register under s 95(3), the Secretary of State or the Welsh Ministers must as soon as is reasonably practicable after entering the land send a copy of the information included in the register in relation to the land to any body to whom Pt X applies, if it appears from the register that the body or a subsidiary of the body owns a freehold or leasehold interest in the land: s 96A(1) (s 96A prospectively added by the Local Government Act 1988 Sch 5 para 2(1)). Where land is entered on a register under the Local Government, Planning and Land Act 1980 s 95(3) and the Secretary of State amends or the Welsh Ministers amend the information included in the register in relation to the land, he or they must as soon as is reasonably practicable after amending the information send a copy of the amended information to any body to whom Pt X applies, if it appears from the register that the body or a subsidiary of the body owns a freehold or leasehold interest in the land: s 96A(2) (as so prospectively added). The fact that the Secretary of State or the Welsh Ministers must send anything to a council under s 96 (see the text and notes 13-15) does not displace any duty of him or of them to send anything to the council under s 96A(1) or s 96A(2): s 96A(3) (as so prospectively added). Where a copy sent under s 96A(1) or s 96A(2) has been received by a body, if at any time the body becomes aware that any information in the only or latest copy received by it is or has become inaccurate, it must as soon as is reasonably practicable after becoming so aware inform the Secretary of State or the Welsh Ministers that the information is inaccurate and give him or them, so far as it is able, the corrected information: s 96A(4), (5) (as so prospectively added). However, s 96A(5) does not apply if, when the body becomes so aware, the land concerned is no longer entered on a register under s 95(3): s 96A(6) (as so prospectively added).

10 For the purposes of the Local Government, Planning and Land Act 1980 s 95, 'Crown land' means land belonging to a government department or to a body who perform its functions on behalf of the Crown or held on trust for Her Majesty for the purposes of a government department: s 95(6). For the purposes of s 95(6), 'government department' includes any Minister of the Crown: s 95(6). As to Crown land see **CROWN PROPERTY**.

11 Local Government, Planning and Land Act 1980 s 95(4).

12 Local Government, Planning and Land Act 1980 s 95(5).

13 Local Government, Planning and Land Act 1980 s 96(1)(a).

14 Local Government, Planning and Land Act 1980 s 96(1)(b). It is the duty of a council to whom amendments to a register are sent under s 96(1)(b) to incorporate the amendments in its copy of the register: s 96(2).

15 Local Government, Planning and Land Act 1980 s 96(3). If any member of the public requires a council to supply him with a copy of any information contained in such a copy of a register, the council is to supply him with a copy of that information on payment of such reasonable charge for making it as the council may determine: s 96(4).

16 Local Government, Planning and Land Act 1980 s 97(1) (s 97 substituted by the Local Government Act 1988 Sch 5 para 3). A body need only comply with a direction under the Local Government, Planning and Land Act 1980 s 97(1) as regards land which is situated in an area in relation to which Pt X is in operation: s 97(2) (as so substituted). Where a body to whom Pt X applies or a subsidiary of such a body holds a freehold or leasehold interest in land situated in an area in relation to which Pt X is in operation, the Secretary of State or the Welsh Ministers may direct the body to whom Pt X applies to give him such information about the land as he may specify: s 97(3) (as so substituted).

UPDATE

525 Registration of underused or unused land held by public bodies

NOTES 3, 4--Definition of 'wholly-owned subsidiary' amended: SI 2009/1941. Local Government, Planning and Land Act 1980 s 100(1), Sch 16 further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 49.

Development and Miscellaneous Powers/526. Disposal of underused or unused land held by public bodies.

526. Disposal of underused or unused land held by public bodies.

The Secretary of State or the Welsh Ministers¹ may direct a public body to whom these provisions for the time being apply²:

- 495 (1) to take steps for the disposal³ of the interest held by it in any land which for
the time being satisfies certain conditions⁴ or any lesser interest in such land⁵; or
496 (2) to ensure that a subsidiary of the public body takes steps for the disposal of
the interest held by the subsidiary in any land which for the time being satisfies
those conditions or any lesser interest in such land⁶,

being, in either case, steps which it is necessary to take to dispose of the interest and which it is in its power to take⁷.

A direction may specify the steps to be taken for the disposal of an interest in land and the terms and conditions on which an offer to dispose of it is to be made⁸. A direction under these provisions may be varied or revoked by a further direction⁹. Before giving a direction to a body, the Secretary of State or Welsh Ministers must give the body notice of his or their proposal to give the direction and of its proposed contents¹⁰. A body which receives such a notice may make representations to the Secretary of State or the Welsh Ministers as to why the proposed direction should not be given or as to its proposed contents¹¹.

A person duly authorised in writing by the Secretary of State or Welsh Ministers may at any reasonable time enter any land for the purpose of helping the Secretary of State or Welsh Ministers to decide whether to give a direction¹² in relation to the land¹³. A person may not enter land under these provisions unless at least 21 clear days' notice in writing of the intended entry has been given to every person who is an owner¹⁴ or occupier¹⁵.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the bodies to whom the Local Government, Planning and Land Act 1980 Pt X (ss 93-100) applies see PARA 525 note 3.

3 For the purposes of the Local Government, Planning and Land Act 1980 s 98 and s 99 (see text and notes 10-11) references to the 'disposal of an interest' in land include references to the grant of an interest in land: s 98(5).

4 Ie those conditions specified in Local Government, Planning and Land Act 1980 s 95(2): see PARA 525.

5 Local Government, Planning and Land Act 1980 s 98(1)(a) (s 98(1)(a), (b) amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 176(1)).

6 Local Government, Planning and Land Act 1980 s 98(1)(b) (as amended: see note 5).

7 Local Government, Planning and Land Act 1980 s 98(1). The power to give directions conferred by s 98 is in addition to and not in derogation from any such power conferred by any other enactment: s 98(4).

8 Local Government, Planning and Land Act 1980 s 98(2). A direction under s 98 may include provision that no disposal of an interest to which the direction relates is, while the direction remains unrevoked, to be made in favour of a person or body who: (1) is specified, or is of a description specified, in the direction; and (2) is at the date the disposal is proposed to be made associated with the body to whom the direction is given: s 98(2A) (s 98(2A), (6)-(9) added by the Local Government Act 1988 Sch 5 para 4). For the purposes of the Local Government, Planning and Land Act 1980 s 98(2A), references to a 'disposal of an interest' include references to a contract to dispose of an interest, and references to 'making a disposal' include references to entering into such a contract: s 98(6) (as so added). For the purposes of s 98(2A), a person is associated with a body if, but only if, he is a member of the body or of a subsidiary of the body or he is a nominee of the body or of a

subsidiary of the body: s 98(7) (as so added). For the purposes of s 98(2A), a body is associated with another body if, but only if: (a) the other body, or a subsidiary of the other body, is a member of it; (b) any of its members is also a member of the other body or of a subsidiary of the other body; or (c) any of its members is a nominee of the other body or of a subsidiary of the other body: s 98(8) (as so added). For these purposes, notwithstanding s 100(1) (see PARA 525), 'subsidiary' has the same meaning as in the Companies Act 1985 s 736(1) (see **COMPANIES** vol 14 (2009) PARA 25): Local Government, Planning and Land Act 1980 s 98(9) (as so added). As from a day to be appointed, this definition is amended so that a body is also to be taken to be associated with another body for the purposes of s 98(2A) if, but only if, in any case where the body to whom Pt X applies is one of the bodies specified in s 98(8A), the other body is a company under the control or subject to the influence of that body within the meaning of the Local Government and Housing Act 1989 Pt V (ss 67-73) (see PARA 402 et seq): Local Government, Planning and Land Act 1980 s 98(8) (as so added; and prospectively amended by the Local Government and Housing Act 1989 Sch 11 para 56). Further, as from a day to be appointed, this definition is again amended so that a body is to be taken to be associated with another body for the purposes of s 98(2A) if, but only if, in any case where the body to whom Pt X applies is one of the authorities specified in s 98(8A), the other body is an entity which is under the control of that body, subject to its influence or jointly controlled by it and one or more other bodies: Local Government, Planning and Land Act 1980 s 98(8) (as so added and prospectively amended; and further prospectively amended by the Local Government and Public Involvement in Health Act 2007 Sch 14 para 3(1), (2)(a)(ii)). At the date at which this volume states the law no such days had been appointed. As from a day to be appointed, the bodies referred to in the Local Government, Planning and Land Act 1980 s 98(8) are: a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARAS 47-53), and the London Fire and Emergency Planning Authority: Local Government, Planning and Land Act 1980 s 98(8A) (prospectively added by the Local Government and Housing Act 1989 Sch 11 para 56; and amended by the Local Government (Wales) Act 1994 Sch 16 para 57(4); the Greater London Authority Act 1999 Sch 29 para 30, Sch 34 Pt VIII; and the Local Government and Public Involvement in Health Act 2007 Sch 13 para 36(1), (3)). As from a day to be appointed, this provision is amended so as to provide that the authorities referred to in the Local Government, Planning and Land Act 1980 s 98(8) are: a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, a joint authority established by the Local Government Act 1985 Pt IV (see PARAS 47-53), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 (see PARA 51), and the London Fire and Emergency Planning Authority: Local Government, Planning and Land Act 1980 s 98(8A) (as so prospectively added and amended; and further prospectively amended by the Local Government and Public Involvement in Health Act 2007 Sch 14 para 3(1), (2)(b)). At the date at which this volume states the law, no such days had been appointed. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. The Secretary of State may by order define for the purposes of the Local Government, Planning and Land Act 1980 s 98(8)(d) the references to 'an entity under the control of' the body mentioned there; 'an entity subject to the influence of' that body; and 'an entity jointly controlled by that body and one or more other bodies: Local Government and Public Involvement in Health Act 2007 ss 217(1)(c), 218(1)(b). At the date at which this volume states the law no such order had been made.

9 Local Government, Planning and Land Act 1980 s 98(3).

10 Local Government, Planning and Land Act 1980 s 99(1). The Secretary of State or the Welsh Ministers need not give notice under s 99(1) as regards a further direction revoking a previous direction given under s 98 (see the text and notes 1-9): s 99(5A) (s 99(5A)-(5E) added by the Local Government Act 1988 Sch 5 para 5). The Secretary of State or the Welsh Ministers need not give notice under the Local Government, Planning and Land Act 1980 s 99(1) as regards a further direction varying a previous direction given under s 98 (see the text and notes 1-9) if: (1) the variation consists only of one which omits part of the land to which the previous direction relates; or (2) the variation is stated in the further direction to consist only of one which is made to take account of a representation of the body to whom the previous direction was given: s 99(5B) (as so added). The contents of a direction under s 98 (see the text and notes 1-9) may differ from its proposed contents contained in a notice given under s 99(1) if: (a) the difference consists only of a variation which omits part of the land referred to in the proposed contents; or (b) the difference is stated in the direction to consist only of a variation which is made to take account of a representation of the body to whom the notice was given: s 99(5C) (as so added).

11 Local Government, Planning and Land Act 1980 s 99(2). If the body does not make such representations within a period of 42 days from the date of the notice or within such longer period as the Secretary of State or the Welsh Ministers may in any particular case allow, he or they may give the direction as proposed: s 99(3). The Secretary of State or the Welsh Ministers may by order made by statutory instrument substitute a period specified in the order for the period of 42 days specified in s 99(3) or for such other period as is for the time being specified in that provision by virtue of an order under this provision: s 99(5D) (as added: see note 10). No order under s 99(5D) may substitute a period as regards a notice given before the coming into force of the order: s 99(5E) (as added: see note 10). At the date at which this volume states the law no orders had been made under the Local Government, Planning and Land Act 1980 s 99(5D).

If a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see **PARAS** 47-53), an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 (joint waste authorities: see **PARA** 51), the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) **PARA** 139 et seq), the Metropolitan Police Authority, a development corporation established under the New Towns Act 1981 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA** 1322 et seq), an urban development corporation established under the Local Government, Planning and Land Act 1980 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA** 1428 et seq) or any authority, body or undertakers in relation to whom the Secretary of State is, or the Welsh Ministers are, the appropriate minister has made representations under the Local Government, Planning and Land Act 1980 s 98(2), the Secretary of State or the Welsh Ministers may not give a direction unless he is or they are satisfied that the interest to which the direction would relate can be disposed of in the manner in which and on the terms and conditions on which he proposes or they propose that the interest must be disposed of without serious detriment to the performance of its functions or the carrying on of its undertaking: s 99(4) (amended by the New Towns Act 1981 Sch 12 para 28; the Local Government Act 1985 Sch 14 para 59, Sch 17; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Local Government (Wales) Act 1994 Sch 16 para 57(5); the Police and Magistrates' Courts Act 1994 Sch 4 para 21; the Police Act 1996 Sch 7 para 1(2)(p); the Police Act 1997 Sch 6 para 15; the Greater London Authority Act 1999 Sch 27 para 44(1), Sch 29 para 31; the Criminal Justice and Police Act 2001 Sch 6 para 37, Sch 7 Pt 5(1); the Local Government and Public Involvement in Health Act 2007 Sch 13 para 36(1), (4); and the Housing and Regeneration Act 2008 Sch 8 paras 25, 28, Sch 16). As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) **PARAS** 147-155.

If any other body to whom the Local Government, Planning and Land Act 1980 Pt X applies has made such representations, the Secretary of State or the Welsh Ministers may not give a direction unless the appropriate minister certifies that the interest to which the direction would relate can be disposed of in the manner in which and on the terms and conditions on which the Secretary of State proposes, or the Welsh Ministers propose, that the interest must be disposed of without serious detriment to the performance of its functions or the carrying on of its undertaking: s 99(5).

For the purposes of s 99, 'appropriate minister': (1) in relation to any body who is a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt XI (ss 262-283) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA** 1009 et seq), has the same meaning as in Pt XI (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA** 1009); and (2) in relation to any other body, has the meaning given by an order under this provision made by statutory instrument by the Secretary of State with the concurrence of the Treasury: Local Government, Planning and Land Act 1980 s 99(6) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 44(2); and the Local Government Act 1988 Sch 5). As to the orders that have been made under the Local Government, Planning and Land Act 1980 s 99(6) see the Public Bodies' Land (Appropriate Ministers) Order 1981, SI 1981/15 (amended by SI 1994/2567).

12 le under the Local Government, Planning and Land Act 1980 s 98: see the text and notes 1-9.

13 Local Government, Planning and Land Act 1980 s 99A(1) (s 99A added by the Local Government Act 1988 Sch 5 para 6).

14 For the purposes of the Local Government, Planning and Land Act 1980 s 99A, 'owner' in relation to any land, means a person other than a mortgagee not in possession who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding, or entitled to the rents and profits of, the land under a lease or agreement: s 99A(4) (as added: see note 13).

15 Local Government, Planning and Land Act 1980 s 99A(3) (as added: see note 13).

UPDATE

526 Disposal of underused or unused land held by public bodies

NOTE 8--Local Government, Planning and Land Act 1980 s 98(8A) further amended:
Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 49.
Local Government, Planning and Land Act 1980 s 98(9) amended: SI 2009/1941.

NOTE 11--Local Government, Planning and Land Act 1980 s 99(4) further amended:
Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 49.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/527. Assessment of development land.

527. Assessment of development land.

Where the Secretary of State directs or Welsh Ministers¹ direct an authority² to do so, it must make an assessment of land which is in its area and which is in its opinion available and suitable for development for residential purposes³. In connection with any such assessment, the authority must comply with such directions as the Secretary of State or Welsh Ministers may give⁴.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 The following are authorities for the purposes of the Local Government, Planning and Land Act 1980 s 116: (1) in its application to England, the councils of counties, districts and London boroughs; (2) in its application to Wales, the councils of counties and county boroughs: s 116(4) (amended by the Local Government Act 1985 Sch 17; and the Local Government (Wales) Act 1994 Sch 16 para 59(1), Sch 18). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 Local Government, Planning and Land Act 1980 s 116(1).

4 Local Government, Planning and Land Act 1980 s 116(2). In particular, directions may be given: (1) about any consultations to be made prior to the assessment (whether with other authorities or with builders or developers or other persons), about the way any consultation is to be made, and about producing reports of assessments and making copies of the reports available to the public; and (2) that an authority is to make the assessment alone or jointly with another authority or authorities: s 116(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/528. Acceptance of gifts of property.

528. Acceptance of gifts of property.

A local authority¹ may accept, hold and administer: (1) for the purpose of discharging any of its functions², gifts of property, whether real or personal, made for that purpose³; or (2) for the benefit of the inhabitants of its area or of some part of it, gifts made for that purpose⁴. The local authority may execute any work, including works of maintenance or improvement, incidental to or consequential on the exercise of the powers conferred⁵. However, these provisions do not authorise the acceptance by a local authority of property which, when accepted, would be held in trust for an ecclesiastical charity⁶ or for a charity for the relief of poverty⁷.

1 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

2 As to the discharge of functions see PARA 369 et seq.

3 Local Government Act 1972 s 139(1)(a). See *County and District Properties Ltd v Horsham UDC* (1970) 215 Estates Gazette 1399, [1970] EGD 743.

4 Local Government Act 1972 s 139(1)(b).

5 Local Government Act 1972 s 139(1). Where any such work is executed in connection with a gift made for the benefit of the inhabitants of the area of a local authority or of some part of that area, the cost of executing the work is to be added to any expenditure under s 137 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 519) in computing the limit imposed on that expenditure by s 137(4): s 139(2). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5.

6 As to ecclesiastical charities see **CHARITIES** vol 8 (2010) PARA 264; **ECCLESIASTICAL LAW**.

7 Local Government Act 1972 s 139(3). As to charities for the relief of poverty see **CHARITIES** vol 8 (2010) PARAS 14-21. Nothing in s 139 affects any powers exercisable by a local authority under or by virtue of the Education Act 1996 (see **EDUCATION**): Local Government Act 1972 s 139(4) (amended by the Education Act 1996 Sch 37 para 24).

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529. Consents to land transactions by local authorities and protection of purchasers.

In any case where under the general powers of local authorities¹ relating to land transactions², the consent of any minister³ is required to a dealing in land by a local authority, that consent may be given: (1) in relation to any particular transaction or transactions or in relation to a particular class of transactions⁴; and (2) in relation to local authorities generally, or local authorities of a particular class, or any particular local authority or authorities⁵; and (3) either unconditionally or subject to such conditions as the minister concerned may specify⁶. Where a local authority purports to acquire, appropriate or dispose of land⁷ then: (a) in favour of any person claiming under the authority, the acquisition, appropriation or disposal so purporting to be made is not invalid by reason that any consent of a minister which is required has not been given or that any requirement as to advertisement or consideration of objections has not been complied with⁸; and (b) a person dealing with the authority or a person claiming under the authority is not to be concerned to see or inquire whether any such consent has been given or whether any such requirement has been complied with⁹.

1 For the purposes of the Local Government Act 1972 s 128, 'local authority' includes a parish meeting and the parish trustees of a parish: s 128(4). As to the meaning of 'local authority' generally see PARA 23. See also PARA 462 note 3. As to the meaning of 'parish meeting' see PARA 34. As to parish trustees see PARA 34.

2 Ie under the Local Government Act 1972 ss 120-123: see PARA 509 et seq. As to the meaning of 'land' see PARA 509 note 4.

3 In relation to Wales, the Local Government Act 1972 s 128(1) has effect as if the reference to 'the minister' included a reference to the Welsh Ministers, and following references in s 128 to 'minister' are to be construed accordingly: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 97.

4 Local Government Act 1972 s 128(1)(a).

5 Local Government Act 1972 s 128(1)(b).

6 Local Government Act 1972 s 128(1)(c). Conditions may be specified by the minister either generally or in relation to any particular transaction or transactions or class of transactions: s 128(1)(c). The provisions of the Town and Country Planning Act 1959 Pt II (ss 22-30) (see **TOWN AND COUNTRY PLANNING**) requiring consent do not apply to the exercise of powers in relation to land transactions under the Local Government Act 1972: see s 128(3). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5.

7 Ie under the Local Government Act 1972 ss 120-123 (see PARA 509 et seq) or under any other enactment, whether passed before, at the same time as, or after the Local Government Act 1972. As to the meaning of 'enactment' see PARA 509 note 1.

8 Local Government Act 1972 s 128(2)(a).

9 Local Government Act 1972 s 128(2)(b).

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530. Repayment of unclaimed compensation.

Where a local authority¹ has paid money into court² and where after the expiration of the period of 12 years beginning with the date when the money was paid into court any of the money, or any assets attributable to the money³, has not or have not been ordered by a court of competent jurisdiction to be paid or transferred to or applied for the benefit of the authority or another person⁴, the High Court may, on the application of the authority, order that the money or assets are to be paid or transferred to the authority⁵. Where at any time after money has been paid or assets have been so transferred to a local authority it appears to the High Court, on the application of another person, that the court would have ordered the whole or part of the money or assets to be paid or transferred to the applicant if the money or assets had not been paid or transferred to the authority, the court may order the authority to pay to the applicant such a sum as the court considers just⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 Local Government (Miscellaneous Provisions) Act 1976 s 29(1)(a). The reference in the text to payment into court is a reference to payment in pursuance of the Lands Clauses Consolidation Act 1845 s 76 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 661) or s 85 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 639) or the Compulsory Purchase Act 1965 s 9 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 661, 663-664) or Sch 2 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718) or Sch 3 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 641 et seq): Local Government (Miscellaneous Provisions) Act 1976 s 29(1)(a).

If a former authority paid money into court as mentioned in s 29(1)(a) in respect of land or an interest in land which is held by a local authority and has not since its acquisition by the former authority been transferred otherwise than by an Act or an order made under an Act, s 29(1) has effect in relation to the payment as if it had been made by the local authority on the date on which it was actually made: s 29(3). For the purposes of s 29(3), 'former authority' means an authority which has ceased to exist and which, when it existed, was constituted in pursuance of the enactments relating to local government which were then in force: s 29(3). For the purposes of s 29(3), any land held by a parish council is to be treated as held by the district council whose area includes the area of the parish council, and any land held by a community council is to be treated as held by the county or county borough council whose area includes the area of the community council: s 29(4) (substituted by SI 1996/3071). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 ie by way of interest, securities, accumulations from securities, proceeds of sale of securities or otherwise.

4 Local Government (Miscellaneous Provisions) Act 1976 s 29(1)(b).

5 Local Government (Miscellaneous Provisions) Act 1976 s 29(1).

6 Local Government (Miscellaneous Provisions) Act 1976 s 29(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/531. Payment of purchase or compensation money by one local authority to another.

531. Payment of purchase or compensation money by one local authority to another.

With the consent of the Secretary of State or the Welsh Ministers¹, any purchase money or compensation payable in pursuance of the general powers relating to land transactions² by a local authority³ in respect of any land acquired from another local authority, being money or compensation which would, apart from these provisions⁴, be required to be paid into court⁵, may instead be paid and applied as the Secretary of State or the Welsh Ministers may determine⁶.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 I.e. the Local Government Act 1972 ss 120-127: see PARA 509 et seq. As to the meaning of 'land' see PARA 509 note 4.

3 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

4 I.e. apart from the Local Government Act 1972 s 129.

5 I.e. in accordance with the Compulsory Purchase Act 1965: see **COMPULSORY ACQUISITION OF LAND**.

6 Local Government Act 1972 s 129(1). A decision of the Secretary of State or the Welsh Ministers under s 129 is to be final: s 129(2). As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5.

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532. Power of local authorities to survey land.

A person authorised in writing by a local authority¹ may at any reasonable time survey² any land³ in connection with a proposal by the authority to acquire compulsorily an interest in the land⁴ or a right over the land⁵ which is not such an interest⁶, and for the purpose of surveying any land may enter on that or any other land⁷. A person authorised by a local authority to enter on land:

497 (1) must, if required before or after entering on the land, produce evidence of his authority to enter⁸;

498 (2) may take with him on to the land such other persons and such equipment as are necessary for the survey in question⁹;

499 (3) must not, if the land is occupied, demand admission to the land as of right unless notice of the intended entry has been served by the local authority on the occupier not less than 14 days before the demand¹⁰;

500 (4) must, if the land is unoccupied when he enters or the occupier is then temporarily absent, leave the land as effectually secured against trespassers as he found it¹¹;

501 (5) must not place or leave apparatus on or in the land or remove apparatus from the land unless notice of his intention to do so has been served by the local authority on an owner¹² and the occupier, if any, of the land not less than 14 days before he does so¹³;

502 (6) must not search or bore on or in the land which is the subject of the survey in question if the land is held by relevant undertakers unless notice of his intention to do so has been served by the local authority on the undertakers not less than 14 days before he does so¹⁴.

Where, in connection with a proposal of a local authority to acquire compulsorily an interest in the land or a right over the land¹⁵, a person interested in any land suffers damage in consequence of the exercise of a power of entry or to take such equipment as is necessary on to the land¹⁶ or a failure to leave the land effectually secured against trespassers¹⁷, he is entitled to recover compensation for the damage from the local authority¹⁸.

A person who:

- 503 (a) wilfully obstructs another person in the exercise of a power of entry or to take such equipment as is necessary on to the land conferred¹⁹ on the other person²⁰; or
- 504 (b) while another person is on any land in pursuance of the power of entry²¹, wilfully obstructs him in doing things connected with the survey in question²²; or
- 505 (c) removes or otherwise interferes with apparatus left on or in land²³,

is guilty of an offence²⁴.

1 As to the meaning of 'local authority' see PARA 23.

2 For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 15, references to 'surveying' include surveying from the air: see s 15(2). The power to survey land includes power to search and bore on and in the land for the purpose of ascertaining the nature of the subsoil or whether minerals are present in the subsoil: see s 15(2). Where it is proposed to search or bore in pursuance of s 15 in a street within the meaning of the New Roads and Street Works Act 1991 Pt III (ss 48-106) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 9), the following provisions have effect as if the searching or boring were street works within the meaning of Pt III (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 406 et seq): (1) the provisions of s 55 (notice of starting date of works: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 426), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works; (2) the provisions of s 69 (requirements to be complied with where works are likely to affect another person's apparatus in the street: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 455); and (3) the provisions of s 82 (liability for damage or loss caused: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 472): Local Government (Miscellaneous Provisions) Act 1976 s 15(4) (substituted by the New Roads and Street Works Act 1991 Sch 8 Pt IV para 106). 'Notice' means notice in writing: Local Government (Miscellaneous Provisions) Act 1976 s 44(1). 'Apparatus' includes any structure constructed in order that apparatus may be lodged in it: s 44(1).

3 As to the meaning of 'land' see PARA 509 note 4.

4 As to the compulsory acquisition of land by principal councils see PARA 510; and as to the compulsory acquisition of land by parish and community councils see PARA 517.

5 As to the compulsory acquisition of rights over land see PARA 511.

6 Local Government (Miscellaneous Provisions) Act 1976 s 15(1)(a).

7 Local Government (Miscellaneous Provisions) Act 1976 s 15(1)(b). This power to enter on land includes power to place and leave, on or in the land, apparatus for use in connection with the survey in question and power to remove the apparatus: see s 15(2).

A local authority which has power by virtue of the Highways Act 1980 s 289(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 927), the Town and Country Planning Act 1990 s 324(6) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 57), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88(5) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1083) or the Community Land Act 1975 s 15, Sch 4 para 20(1) (repealed) to authorise a person to survey or enter on any land as mentioned in the Local Government (Miscellaneous Provisions) Act 1976 s 15(1) is not entitled by virtue of s 15(1) to authorise a person to survey or enter on the land: s 15(9) (amended by the Highways Act 1980 Sch 24; and the Planning (Consequential Provisions) Act 1990 Sch 2 para 35(2)).

8 Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(a).

9 Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(b).

10 Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(c).

11 Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(d).

12 'Owner', in relation to any land, place or premises, means a person who either on his own account or as agent or trustee for another person is receiving the rackrent of the land, place or premises or would be entitled to receive it if the land, place or premises were let at a rackrent; and 'owned' is to be construed accordingly: Local Government (Miscellaneous Provisions) Act 1976 s 44(1).

13 See the Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(e)(i). Unless the Secretary of State authorises or the Welsh Ministers authorise him in writing to do so, a person authorised to enter on land in pursuance of s 15(1) (see the text and notes 1-7) must not place or leave apparatus on or in the land or remove apparatus from the land if the land is held by relevant undertakers who within 14 days serve on the local authority a notice stating that they object to the placing or leaving or removal of the apparatus on the ground that to do so would be seriously detrimental to the carrying on of their undertaking: see s 15(3)(e)(ii). For these purposes, 'relevant undertakers' means any statutory undertakers, any person authorised to carry on a light railway undertaking, a ferry undertaking or an undertaking for supplying district heating, and the Civil Aviation Authority and a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (air traffic services: see **AIR LAW** vol 2 (2008) PARA 139 et seq): Local Government (Miscellaneous Provisions) Act 1976 s 15(3) (amended by the Airports Act 1986 Sch 6 Pt I; and SI 2001/4050). For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 15(3), a person who holds a licence under the Transport Act 2000 Pt I Ch 1 may not be considered to be a relevant undertaker unless the person is carrying out activities authorised by the licence and the person's undertaking may not be considered to be that of a relevant undertaker except to the extent that it is the person's undertaking as licence holder: Local Government (Miscellaneous Provisions) Act 1976 s 15(3A) (added by SI 2001/4050). 'Statutory undertakers' means any of the following bodies, namely, any statutory undertakers within the meaning of the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 80) and the Post Office: Local Government (Miscellaneous Provisions) Act 1976 s 44(1) (amended by the Highways Act 1980 Sch 24; the British Telecommunications Act 1981 Sch 3 para 10(4); the Telecommunications Act 1984 Sch 4 para 3; and the Water Act 1989 Sch 27 Pt I). As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq. As to the Post Office see **POST OFFICE**. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

14 Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(f)(i). Unless the Secretary of State authorises or the Welsh Ministers authorise him in writing to do so, the person authorised to enter on land in pursuance of s 15(1) (see the text and notes 1-7) must not search or bore on or in the land which is subject to the survey in question if the land is held by relevant undertakers and if within 14 days the undertakers serve on the local authority a notice stating that they object to the searching or boring on the ground that to do so would be seriously detrimental to the carrying on of their undertaking: see s 15(3)(f)(ii).

15 Ie such a proposal as is mentioned in the Local Government (Miscellaneous Provisions) Act 1976 s 15(1) (a): see the text and notes 1-6.

16 Ie a power conferred by the Local Government (Miscellaneous Provisions) Act 1976 s 15(1) (see the text and notes 1-7) or s 15(3)(b) (see the text to note 9).

17 Ie a failure to perform the duty imposed by the Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(d): see the text to note 11.

18 Local Government (Miscellaneous Provisions) Act 1976 s 15(5). Any dispute as to a person's entitlement to compensation in pursuance of s 15(5) or as to the amount of the compensation is to be determined by the Upper Tribunal; and the Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) are to apply with the necessary modifications in relation to the determination by the Upper Tribunal of such a dispute: Local Government (Miscellaneous Provisions) Act 1976 s 15(6) (amended by SI 2009/1307). As to the Upper Tribunal see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) para 13A.

19 Ie a power conferred by the Local Government (Miscellaneous Provisions) Act 1976 s 15(1) (see the text and notes 1-7) or s 15(3)(b) (see the text to note 9).

20 Local Government (Miscellaneous Provisions) Act 1976 s 15(7)(a).

21 Ie in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 15(3)(b): see the text to note 9.

22 Local Government (Miscellaneous Provisions) Act 1976 s 15(7)(b).

23 Local Government (Miscellaneous Provisions) Act 1976 s 15(7)(c).

24 Local Government (Miscellaneous Provisions) Act 1976 s 15(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 15(7) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7. If a person who has entered on any land in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 15 discloses to another

person information obtained by him there about a manufacturing process or trade secret, then, unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter on the land, he is guilty of an offence and liable, on summary conviction, to a fine not exceeding the prescribed sum or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: s 15(8) (amended by the Magistrates' Courts Act 1980 s 32).

The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(3) LAND TRANSACTIONS/(iii) Land Development and Miscellaneous Powers/533. Power to obtain particulars of persons interested in land.

533. Power to obtain particulars of persons interested in land.

Where, with a view to performing a function conferred on a local authority¹ by any enactment, the authority considers that it ought to have information connected with any land, the authority may serve on one or more of the following persons:

- 506 (1) the occupier of the land²; and
- 507 (2) any person who has an interest in the land either as freeholder, mortgagee or lessee or who directly or indirectly receives rent for the land³; and
- 508 (3) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it⁴,

a notice⁵ specifying the land and the function and the enactment which confers the function and requiring the recipient of the notice to furnish to the authority, within a period specified in the notice⁶, the nature of his interest in the land and the name and address of each person whom the recipient of the notice believes is the occupier of the land and of each person whom he believes is, as respects the land, such a person as is mentioned in head (2) and head (3) above⁷. A person who fails to comply with the requirements of a notice served on him⁸ or who, in furnishing any information in compliance with such a notice, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular⁹ is guilty of an offence¹⁰.

1 As to the meaning of 'local authority' see PARA 23. As to the functions of local authorities see PARA 579 et seq.

2 Local Government (Miscellaneous Provisions) Act 1976 s 16(1)(a).

3 Local Government (Miscellaneous Provisions) Act 1976 s 16(1)(b).

4 Local Government (Miscellaneous Provisions) Act 1976 s 16(1)(c).

5 As to the meaning of 'notice' see PARA 532 note 2.

6 The period must not be less than 14 days beginning with the day on which the notice is served: Local Government (Miscellaneous Provisions) Act 1976 s 16(1).

7 Local Government (Miscellaneous Provisions) Act 1976 s 16(1).

8 Local Government (Miscellaneous Provisions) Act 1976 s 16(2)(a).

9 Local Government (Miscellaneous Provisions) Act 1976 s 16(2)(b).

10 Local Government (Miscellaneous Provisions) Act 1976 s 16(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 16(2) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7.

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534. Acquisition of Duchy of Lancaster land.

The Chancellor and Council of the Duchy of Lancaster¹ may sell to a local authority² any land³ belonging to Her Majesty in right of the duchy which the local authority thinks fit to purchase⁴.

1 As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300 et seq.

2 As to the meaning of 'local authority' see PARA 23. See also PARA 462 note 3.

3 As to the meaning of 'land' see PARA 509 note 4.

4 Local Government Act 1972 s 130. The land may be granted to the local authority and the proceeds of the sale are to be paid and dealt with as if the land had been sold under the authority of the Duchy of Lancaster Lands Act 1855: Local Government Act 1972 s 130. As to limitations generally on the powers of local authorities in relation to land see PARA 509 note 5. As to the sale of land by the Duchy of Lancaster generally see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 308.

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(4) INFORMATION

(i) Introduction

535. Introduction.

Local authorities have a variety of general duties and functions in relation to the administration of information, in particular keeping, copying and allowing access to documents and records¹, and publishing information and publicity². A relevant local authority also has more specific responsibilities with regard to the keeping of, and access to, information in relation to, for example, public meetings³.

A local authority's treatment of information is limited by the applicable terms of the Data Protection Act 1998⁴, the Freedom of Information Act 2000⁵, the European Convention on Human Rights and the common law on breach of confidence⁶.

1 See PARAS 536-544.

2 See PARAS 545-548.

3 See PARA 652 et seq.

4 See PARA 550.

5 See PARA 551.

6 See PARA 552.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/536. Custody of documents of principal councils.

(ii) Documents and Records

536. Custody of documents of principal councils.

Without prejudice to the powers of the *custos rotulorum*¹ to give directions as to the documents of any county², a principal council³, a joint authority, a joint waste authority⁴ or the Council of the Isles of Scilly⁵ must make proper arrangements with respect to any documents which belong to, or are in the custody of, the council or any of its officers⁶.

Each principal council established under the Local Government (Wales) Act 1994⁷ must make and maintain a scheme setting out its arrangements for the proper care, preservation and management of its records⁸. The council by whom a scheme has been made must keep the scheme under review and, where the council considers that it should be modified, the council must make such adjustments to the scheme as it considers appropriate⁹. Before making or modifying its scheme, the council must consult the Welsh Ministers¹⁰ and have regard to any advice that they may give¹¹.

1 As to the appointment and duties of the *custos rotulorum* (normally the lord-lieutenant) see PARAS 115-116; and **MAGISTRATES** vol 29(2) (Reissue) PARA 508.

2 'County', in relation to Wales, means a preserved county: Local Government Act 1972 s 224(3) (added by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 7). As to the meaning of 'preserved county' see PARA 1 note 1. As to the meaning of 'county' generally see PARA 24 note 5.

3 As to the meaning of 'principal council' see PARA 23.

4 See the Local Government Act 1972 s 224(2) (added by the Local Government Act 1985 s 84, Sch 14 para 22; amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; and by the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 14). As to joint authorities see PARA 47 et seq; and as to joint waste authorities see PARA 51.

5 See the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule. As to the Council of the Isles of Scilly see PARA 36.

6 Local Government Act 1972 s 224(1) (renumbered by the Local Government Act 1985 s 84, Sch 14 para 22). As to officers see PARA 425 et seq. This provision is applied to records under the control of a local authority in exercise of the general function to acquire or accept gifts or deposit records under the Local Government (Records) Act 1962 s 2 (see PARA 541): see s 2(5) (amended by the Local Government Act 1963 s 93(1), Sch 18 Pt II); Local Government Act 1972 s 272(2).

7 See PARA 37 et seq.

8 Local Government (Wales) Act 1994 s 60(1). For these purposes, 'records', in relation to a council, means any documents which: (1) belong to the council or of which it has custody; and (2) have been retained for reference and research purposes or because of their likely historical interest: s 60(7). 'Documents' includes records, of whatever form and in whatever medium, which convey or are capable of conveying information: s 60(7).

Each scheme must include details of any relevant shared arrangements which the council concerned has made: s 60(2). 'Shared arrangements', in relation to a council, means any arrangements which the council has made

with any other authority under s 25 (see PARA 417) or the Local Government Act 1972 s 101 (see PARA 370): Local Government (Wales) Act 1994 s 60(7).

Where the records of a principal council established under the Local Government (Wales) Act 1994 relate to the area, or part of the area, of another such council, that other council has the right to inspect those records at all reasonable times (without payment of any fee) and to take copies of any of them, in such manner as carries no risk of damage: s 60(5). This right is subject to any shared arrangements which affect the records concerned: s 60(6).

9 Local Government (Wales) Act 1994 s 60(3).

10 As to the Welsh Ministers see PARA 97.

11 Local Government (Wales) Act 1994 s 60(4).

UPDATE

536 Custody of documents of principal councils

NOTE 4--Local Government Act 1972 s 224(2) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 25.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/537. Custody of documents of parishes and communities.

537. Custody of documents of parishes and communities.

Provision is made for the custody of specified papers, namely public books, writings and papers of a parish or community, including any photographic copies of them, and all documents directed by law to be kept with them¹. All such papers must, in the case of a parish which is co-extensive with a rural parish existing before 1 April 1974², remain in the same custody as before that date³. In the case of any other parish or any community, all such papers must be in the custody of the body to which the documents of that area, other than documents of a specified class, were transferred on that date⁴. In either case, however, the parish or community council or, where there is none, the parish meeting in England or the principal council in Wales, may direct that any such papers be deposited in such custody as may be specified in the direction⁵.

The council of every county or metropolitan district must from time to time inquire into the manner in which specified papers under the control of a parish or parish meeting in its area are kept with a view to their proper preservation, and must make such orders as it thinks necessary for their preservation⁶.

In the case of a parish or community having a separate parish or community council, that council or, if it so requests, the council of the district in which the parish is situated or the council of the principal area in which the community is situated, must provide proper depositories for all the above-mentioned papers belonging to the parish or community for which no provision is otherwise made⁷. In the case of a parish or community not having a separate parish or community council, the council of the district in which the parish is situated or the council of the principal area in which the community is situated must provide proper depositories for all the above-mentioned papers under the control of the parish meeting or belonging to the community, but in England such provision is subject to the consent of the parish meeting⁸.

1 See the Local Government Act 1972 s 226, s 270(1). Nothing in that Act, however, affects the custody of registers of baptisms, marriages and burials and of all other documents containing entries wholly or partly relating to the affairs of the church (as defined in the Local Government Act 1894 s 75(2), where the phrase is defined as including the distribution of offertories or other collections made in any church), or to ecclesiastical charities (as defined in the Local Government Act 1894 s 75(2): see **ECCLESIASTICAL LAW** vol 14 PARA 1051), except documents directed by law to be kept with the papers of a parish or community: Local Government Act 1972 s 226(2). Any person having the custody of any documents mentioned in s 226(2) must have reasonable access to the papers mentioned in the text, and the following bodies must have reasonable access to the documents mentioned in s 226(2): (1) in a parish or community having a separate parish or community council, that council; (2) in any other parish, the parish meeting; (3) in any other community, the principal council; and (4) in any area in England not falling within head (1) or head (2), the district council, London borough council or the Common Council of the City of London, as the case may be: s 226(3) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 47(2)). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to parish meetings see PARA 34; and as to the meaning of 'principal council' see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. Any difference about the custody of or access to any documents mentioned in the text or in the Local Government Act 1972 s 226(2) must, if the area is in Wales or in a metropolitan district, London borough or the City of London, be determined by the Welsh Ministers or the Secretary of State, and in any other case by the county council: s 226(4) (amended by the Local Government Act 1985 s 16, Sch 8 para 22; and the Local Government (Wales) Act 1994 Sch 15 para 47(3)). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 le the date on which the reorganisation of local government under the Local Government Act 1972 came into effect: see PARA 5. As to the meaning of 'existing' see PARA 6 note 8.

3 Local Government Act 1972 s 226(1)(a). As to the continuance of co-extensive rural parishes existing immediately before 1 April 1974 see PARA 27. The custody of parochial documents prior to that date was regulated by the Local Government Act 1933 s 281 (repealed).

4 Local Government Act 1972 s 226(1)(b). For the transitional provisions which effected the transfer of properties (including records) from the former to the new local authorities on 1 April 1974 see PARAS 7-11.

5 Local Government Act 1972 s 226(1) (amended by the Local Government (Wales) Act 1994 Sch 15 para 47(2)).

6 Local Government Act 1972 s 226(5) (amended by the Local Government Act 1985 s 16, Sch 8 para 22; and the Local Government (Wales) Act 1994 s 66(8), Sch 15 para 47(4), Sch 18). Such orders must be complied with by the parish or parish meeting: Local Government Act 1972 s 226(5) (amended by the Local Government (Wales) Act 1994 Sch 15 para 47(4), Sch 18). The Local Government Act 1972 s 226(5) (as so amended) also applies in relation to community councils but as if the functions conferred by it were functions of the principal council: s 226(6) (added by the Local Government (Wales) Act 1994 Sch 15 para 47(5)).

7 Local Government Act 1972 s 227(1) (s 227 amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 48, Sch 18).

8 Local Government Act 1972 s 227(2) (as amended: see note 7).

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538. Documents on parliamentary or statutory deposit.

In any case in which a document of any description is deposited with the proper officer¹ of a local authority², or with the chairman of a parish or community council or with the chairman of a parish meeting³, pursuant to the standing orders of either House of Parliament or to any enactment⁴ or instrument, the proper officer or chairman, as the case may be, must receive and retain the document in the manner and for the purposes directed by the standing orders, enactment or instrument, and must make such notes or indorsements on, and give such acknowledgments and receipts in respect of, the document as may be so directed⁵.

All documents required by any enactment or instrument to be deposited with the proper officer of a parish or community must, in the case of a parish not having a separate parish council, be deposited with the chairman of the parish meeting or, in the case of a community not having a separate community council, be deposited with the proper officer of the principal council⁶.

1 As to the proper officer see PARA 431.

2 For these purposes, 'local authority' includes a joint authority, and a joint waste authority: Local Government Act 1972 s 225(3) (added by the Local Government Act 1985 s 84, Sch 14 para 23; amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; and by the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 15). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq; and as to joint waste authorities see PARA 51. As to the meaning of 'joint waste authority' see PARA 51 note 1.

3 As to the election of these chairmen see PARA 145 et seq. As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to parish meetings see PARA 34.

4 As to the meaning of 'enactment' see PARA 12 note 1.

5 Local Government Act 1972 s 225(1). Subject to any provision to the contrary in any other enactment or instrument, a person interested in any document deposited under s 225 may inspect and make copies of or extracts from it at all reasonable hours on payment to the person having the custody of the document of 10p per inspection plus a further 10p for every hour the inspection continues after the first: s 228(5).

6 See the Local Government Act 1972 s 225(2) (amended by the Local Government (Wales) Act s 66(5), Sch 15 paras 1, 46). As to the meaning of 'principal council' see PARA 23.

UPDATE

538 Documents on parliamentary or statutory deposit

NOTE 2--Definition of 'local authority' in Local Government Act 1972 s 225(3) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 26.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/539. Inspection of certain local authority documents.

539. Inspection of certain local authority documents.

The minutes of proceedings of a parish or community council¹ must be open to the inspection of any local government elector² for the area of the council³, and any such elector may make a copy of or extract from the minutes⁴. A local government elector for the authority's area may also inspect and make a copy of or extract from an order for the payment of money made by the local authority⁵. The accounts of a local authority, and of any of its proper officers⁶, must be open to the inspection of any member of the authority, who may make a copy of or extract from them⁷. Documents open to inspection⁸ must in each case be so open at all reasonable hours and, except where otherwise expressly provided, without payment⁹.

The Secretary of State or the Welsh Ministers¹⁰ may make regulations with respect to the publication of information relating to the accounts of local authorities and the exercise of rights of inspection in relation to those accounts¹¹.

Any requirement imposed by any enactment¹² that any document in the custody or under the control of a local authority or parish meeting is to be made available for inspection is satisfied by its making available for inspection a photographic copy of the document¹³.

A councillor has a right to inspect all documents in the possession of the council so far as his access to the documents is reasonably necessary to enable him properly to perform his duties as a member of the council¹⁴.

1 As to the minutes of local authority meetings see PARAS 575, 625. As to the meaning of 'local authority' see PARA 23. The minutes of proceedings and the accounts of a parish meeting are included within the inspection requirements of the Local Government Act 1972 s 228, as if that meeting were a parish council: s 228(8) (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 6). As to parish meetings see PARA 34. As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 As to the meaning of 'local government elector' see PARA 127 note 2.

3 In relation to the Broads Authority, the references in the Local Government Act 1972 s 228 to a local government elector for the area of the authority are to be construed as references to a local government elector for the area of any of the local authorities mentioned in the Norfolk and Suffolk Broads Act 1988 s 1(3) (a): Local Government Act 1972 s 228(9) (added by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(8)).

4 Local Government Act 1972 s 228(1) (amended by the Local Government (Access to Information) Act 1985 Sch 2 para 6). The Local Government Act 1972 s 228 applies to the minutes of proceedings and the accounts of a joint authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), or the Metropolitan Police Authority as if that authority were a local authority and as if references to a local government elector for the area of the authority were a reference to a local government elector for any local government area in the area for which the authority is established: Local Government Act 1972 s 228(7A) (added by the Local Government Act 1985 s 84, Sch 14 para 24; and amended by the Education Reform Act 1988 s 237, Sch 13; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 13; the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 8; the Greater London Authority Act 1999 s 325, Sch 27 para 30; and the Criminal Justice and Police Act 2001 Sch 6 para 30, Sch 7 Pt 5(1)). As to joint authorities see PARA 47 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq.

The Local Government Act 1972 s 228 applies to the minutes of proceedings and the accounts of a joint waste authority as if that authority were a local authority and as if references to a local government elector for the area of the authority were construed in accordance with s 92(7B) (see PARA 301): Local Government Act 1972 s 228(7B) (added by the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 16). As to joint waste authorities see PARA 51 et seq. As to the meaning of 'joint waste authority' see PARA 51 note 1.

Committee minutes actually laid before the council for its approval are subject to the right of inspection (*Williams v Manchester Corp'n* (1897) 45 WR 412, DC), but the right does not extend to the minutes of a committee exercising delegated powers (*Wilson v Evans* [1962] 2 QB 383, [1962] 1 All ER 247, DC). See also PARA 371.

The right of inspection may be executed by the elector's agent: *R v Glamorganshire County Council, ex p Collier* [1936] 2 All ER 168, DC (a case concerning the right to inspect accounts, etc at audit).

5 Local Government Act 1972 s 228(2). A local government elector for the area of a body subject to audit may: (1) inspect and make copies of any statement of accounts prepared by the body under regulations made under the Audit Commission Act 1998 s 27 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628) and any report, other than an immediate report made to the body by an auditor; and (2) require copies of such statement or report to be delivered to him on payment of a reasonable sum for each copy: see s 14; and PARA 769. As to bodies subject to audit see PARA 757.

6 As to the proper officer see PARA 431.

7 Local Government Act 1972 s 228(3).

8 As to inspection of documents on parliamentary or statutory deposit see the Local Government Act 1972 s 228(5); and PARA 538.

9 Local Government Act 1972 s 228(6). A person having the custody of a document open to inspection is liable on summary conviction to a fine not exceeding level 1 on the standard scale if: (1) he obstructs any person so entitled to inspect, copy or make extracts in such inspection, copying or extraction; or (2) he refuses

to give copies or extracts to any person entitled to obtain them: s 228(7) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7.

10 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

11 See PARA 696 et seq.

12 As to the meaning of 'enactment' see PARA 12 note 1.

13 Local Government Act 1972 s 229(2). However, where colour is relevant to the interpretation of the document, a photographic copy will not suffice unless it distinguishes between the colours so as to enable the document to be interpreted: s 229(7).

14 *R v Southwold Corpn, ex p Wrightson* (1907) 97 LT 431, DC. There is no right to a roving commission to examine documents simply because a person is a councillor: *R v Southwold Corpn, ex p Wrightson*; *R v Barnes Borough Council, ex p Conlan* [1938] 3 All ER 226, 36 LGR 524, DC. Mere curiosity or desire to see and inspect documents is not sufficient: *R v Barnes Borough Council, ex p Conlan*. A factor which was held to be a reason for not ordering access in *R v Barnes Borough Council, ex p Conlan*, was that it had not been established that the councillor had been prevented from carrying out any duties which fell upon him as councillor by the failure to disclose documents, the matters being in the hands of a special committee on which he was not serving or seeking to serve. See also *R v Lancashire County Council Police Authority, ex p Hook* [1980] QB 603, sub nom *R v Clerk to Lancashire Police Committee, ex p Hook* [1980] 2 All ER 353, CA (councillor not entitled to see parts of a report damaging to, or potentially defamatory of, third parties); *Birmingham City District Council v O* [1983] 1 AC 578, [1983] 1 All ER 497, HL (councillor not on social services committee, but having good reason for access to the material, was entitled to see that committee's files in connection with an adoption); *R v Hackney London Borough Council, ex p Gamper* [1985] 3 All ER 275, [1985] 1 WLR 1229 (councillor entitled to access to two sub-committees' documents and meetings, being himself on those sub-committees' parent committee); *R v Sheffield City Council, ex p Chadwick* (1985) 84 LGR 563 (exclusion of opposition councillor from sub-committee on grounds of confidentiality unlawful). Indirect motives where the councillor seeking access to documents is not actuated solely by his public position would be grounds for the court exercising its discretion not to order access to documents: *R v Hampstead Borough Council, ex p Woodward* (1917) 116 LT 213, 15 LGR 309, DC. See further PARA 221.

UPDATE

539 Inspection of certain local authority documents

NOTE 4--Local Government Act 1972 s 228(7A) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 27.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/540. Photographic copies of documents.

540. Photographic copies of documents.

Subject to certain exceptions¹, any requirement imposed by any enactment² that a local authority³ or parish meeting⁴ should keep a document of any description is satisfied by its keeping a photographic copy of the document⁵. In legal proceedings, a photographic copy of a document in the custody of a local authority or parish meeting, or of a document which has been destroyed while in such custody, or any part of it, is admissible in evidence to the like extent as the original⁶.

1 The Local Government Act 1972 s 229 (see PARA 539; and the text and notes 2-6) does not apply to any document deposited with a local authority under the Public Records Act 1958 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 835-841) (see the Local Government Act 1972 s 229(3)), and any document in colour where the colours are relevant to interpretation and the photographic copy does not distinguish between the colours so as to enable the document to be interpreted (see s 229(7)).

2 As to the meaning of 'enactment' see PARA 12 note 1.

3 For these purposes, 'local authority' includes a joint authority, a joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority: Local Government Act 1972 s 229(8) (amended by the Local Government Act 1985 s 84, Sch 14 para 25; the Education Reform Act 1988 s 327(2), Sch Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 14(a); the Police Act 1996 s 203(1), Sch 7 para 1(1), (2)(h); the Police Act 1997 s 88, Sch 6 para 9; the Greater London Authority Act 1999 s 325, Sch 27 para 31; the Criminal Justice and Police Act 2001 Sch 6 para 30, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 17). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq; and as to joint waste authorities see PARA 51 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq.

4 As to parish meetings see PARA 34.

5 Local Government Act 1972 s 229(1). A certificate purporting to be signed by the proper officer of the local authority or the chairman of the parish meeting that a document is a photographic copy of one in its custody or which has been destroyed while in its custody is evidence to that effect: s 229(5). This is subject to s 229(7): see note 1. As to the proper officer see PARA 431.

6 Local Government Act 1972 s 229(4). The court before which a photographic copy is tendered in evidence under this provision may, if the original document is in existence, require its production, and thereupon s 229(4) will not apply to the copy: s 229(6). For these purposes, 'court' and 'legal proceedings' have the same meanings as in the Civil Evidence Act 1968 s 18(2) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 974; **CIVIL PROCEDURE** vol 12 (2009) PARA 1208): Local Government Act 1972 s 229(8).

UPDATE

540 Photographic copies of documents

NOTE 3--Definition of 'local authority' in Local Government Act 1972 s 229(8) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 28.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/541. Acquisition and deposit of records.

541. Acquisition and deposit of records.

A local authority¹ may by agreement acquire by way of purchase records² which, or (in the case of a collection) the majority of which, appear to the authority to be of local interest³; and may accept the gift of records which, or (in the case of a collection) the majority of which, appear to the authority to be of general or local interest⁴. A local authority⁵ may accept the deposit of records which appear to it to be of general or local interest⁶, or which are deposited in accordance with arrangements made by certain other authorities⁷. Local authorities⁸ may also accept the deposit of records authorised under other powers⁹. A local authority¹⁰ other than a parish or community council or parish meeting¹¹ may arrange to deposit any records under its control with another authority¹² or, with the consent of the Secretary of State¹³, with any other person¹⁴.

Where a local authority¹⁵ is obliged to make proper arrangements for documents¹⁶, that obligation applies to records which are under its control by virtue of these provisions¹⁷.

1 For the purposes of the Local Government (Records) Act 1962 s 2(1), (2), 'local authority' means the council of every county, county borough, metropolitan district or London borough, the Common Council of the City of London, the London Fire and Emergency Planning Authority, a police authority established under the

Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), an authority established under s 10 of that Act (waste regulation and disposal authorities) (see PARA 17), and the council of any non-metropolitan district specified in an order made in that behalf by the Secretary of State or the Welsh Ministers: Local Government (Records) Act 1962 s 2(6) (substituted by the Local Government Act 1985 s 16, Sch 8 para 22(1); and amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 1; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 20(1); the Police Act 1996 s 103, Sch 7 para 1; the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 17, Sch 29 para 2; SI 1986/148; and SI 1990/1765). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the application of the Local Government (Records) Act 1962 to national park authorities see PARA 544 note 1.

Any power to make orders under the Local Government (Records) Act 1962 is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 6(1). An order under s 2(6) (as so amended) may be varied or revoked by a subsequent order: s 6(2). Being local, such orders are not noted in this work. As to the Secretary of State or the Welsh Ministers see PARAS 96-97.

2 As to the meaning of 'records' see PARA 544 note 2.

3 Local Government (Records) Act 1962 s 2(1)(a). In the application of s 2 to the Common Council of the City of London, 'local interest' is to be construed as if the area of the council included the whole of Greater London: s 2(7) (added by SI 1986/148).

4 Local Government (Records) Act 1962 s 2(1)(b).

5 See note 1.

6 Local Government (Records) Act 1962 s 2(2)(a).

7 Local Government (Records) Act 1962 s 2(2)(b). As to such arrangements see s 2(4); and the text and notes 10-14.

8 As to the meaning of 'local authority' for these purposes see PARA 544 note 1.

9 Local Government (Records) Act 1962 s 2(3).

10 See note 8.

11 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to parish meetings see PARA 34. The custody of parish and community records is subject to special provision in the Local Government Act 1972 s 226: see PARA 537.

12 See note 1.

13 The Local Government (Records) Act 1962 s 2(4) refers to the Minister of Housing and Local Government. Functions of the minister under the Local Government (Records) Act 1962 were transferred to the Secretary of State: see the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965, SI 1965/319, art 2, Sch 1; and the Secretary of State for the Environment Order 1970, SI 1970/1681, art 2.

14 Local Government (Records) Act 1962 s 2(4) (amended by virtue of the Local Government Act 1972 s 179(1), (4)).

15 See note 8.

16 Ie under the Local Government Act 1972 s 224: see PARA 536.

17 See the Local Government (Records) Act 1962 s 2(5) (amended by the London Government Act 1963 s 93(1), Sch 18, Pt II); the Local Government Act 1972 s 272(2); and the Interpretation Act 1978 s 17(2)(a).

UPDATE

541 Acquisition and deposit of records

NOTE 1--Definition of 'local authority' in the Local Government (Records) Act 1962 s 2(6) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 3(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/542. Research and collection of information.

542. Research and collection of information.

The council of a non-metropolitan county, or the principal council of a principal area, may conduct, or assist in the conducting of, investigations into, and the collection of information relating to, any matters concerning the county or principal area or any part of it, and may make, or assist in the making of, arrangements by which any such information and the results of any such investigation are made available to any other local authority¹ in the county or principal area, any government department or the public².

A scheme may be made for a metropolitan county by the constituent councils whereby one of those councils designated by the scheme has the function of³: (1) carrying out, or assisting in carrying out, investigations into and the collection of information relating to, any matters concerning the area concerned or any part of it⁴; and (2) making, or assisting in making, arrangements whereby any such information and the results of any such investigation are made available to any other local authority in that area, any government department or the public⁵. Whether or not such a scheme is made, a London borough council, the Common Council of the City of London and a metropolitan district council have power to exercise any of the functions described in head (1) and head (2) above⁶. Any information collected by the designated council, and the results of any investigation carried out by it, in the exercise of its functions under the scheme must be made available, on request, to each of the other constituent councils⁷. A scheme may, in the absence of agreement between all the constituent councils, be made by a majority of those councils so as to be binding on all of them; but a council may not be designated by a scheme except with its consent⁸. Any such scheme must require the other constituent councils to contribute⁹ to the expenditure incurred by the designated council in carrying out its functions under the scheme¹⁰. The constituent councils are required to contribute to any expenditure of the designated council which has been incurred with the approval of at least two-thirds of the constituent councils, and the amounts of the contributions are determined so that the expenditure in respect of which they are payable is borne by the constituent councils in proportion to the populations of their respective areas¹¹. A scheme may contain such supplementary provisions as the councils making the scheme think necessary or expedient and may be revoked by those councils (or, in the absence of agreement between all of them, by a majority of those councils) with effect from the end of any financial year after that in which the decision to revoke the scheme is made¹².

The appropriate minister¹³ with respect to any matter may require a county council or principal council to provide him with any information with respect to that matter which is in the possession of, or available to, that council or any other local authority in the county or principal area in consequence of the exercise of any power conferred by or under any enactment¹⁴, and where such a requirement is made in respect of any information which is in the possession of, or available to, any other local authority in the county or principal area, but not the county council or principal council, the county council or principal council may require that other authority to furnish it with that information¹⁵.

1 As the meaning of 'local authority' see PARA 23. The Local Government Act 1972 s 141 (see the text to note 2; and the text to notes 13-15), applies to the Isles of Scilly as if the Council of the Isles of Scilly were a county council: Isles of Scilly Order 1978, SI 1978/1844, art 6(2). As to the Council of the Isles of Scilly see PARA 36.

2 Local Government Act 1972 s 141(1), (3) (s 141(1) amended by the Local Government Act 1985 s 102(1), Sch 16 para 7; s 141(3) added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 32). As to the meanings of 'principal council' and 'principal area' see PARA 23. As to restrictions placed on local authority publicity see PARA 547.

3 Local Government Act 1985 s 88(1) (amended by the Greater London Authority Act 1999 ss 396(11)(a), 423, Sch 34 Pt IX).

4 Local Government Act 1985 s 88(1)(a). Such a scheme may provide that, if two-thirds of the constituent councils so decide, the designated council may require all or any of the constituent councils other than the designated council to carry out in respect of their respective areas an investigation into, or the collection of information relating to, any specified matter concerning the area covered by the scheme or any part of it: s 88(5). Where such a requirement is imposed on a council: (1) that council must comply with the requirement in such manner and within such time as may be specified in the requirement (s 88(5)(a)); and (2) if that council fails to comply with the requirement, the designated council may itself do what was required and recover the cost of doing it from that council (s 88(5)(b)).

5 Local Government Act 1985 s 88(1)(b). A scheme could not come into force before 1 April 1986 (see s 1(2)) but continues in force until the end of at least two financial years after that in which it is made: s 88(8). 'Financial year' means the period of 12 months ending with 31 March in any year: Local Government Act 1972 s 270(1); definition applied by virtue of the Local Government Act 1985 s 105(2). As to the restrictions placed on local authority publicity see PARA 547.

6 Local Government Act 1985 s 88(13). In the application of s 88(13) in relation to a London borough council or the Common Council of the City of London, head (1) and head (2) in the text have effect as if the area referred to were Greater London: see s 88(13A) (added by the Greater London Authority Act 1999 s 396(12)). As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

The appropriate minister with respect to any matter may require any such council as is mentioned in the Local Government Act 1985 s 88(13) to provide him with any information with respect to that matter which is in the possession of, or available to, that council in consequence of the exercise of any powers conferred by or under any enactment: s 88(14). As to the meaning of 'appropriate minister' see PARA 6 note 7; definition applied by virtue of the Local Government Act 1985 s 105(2).

7 Local Government Act 1985 s 88(7).

8 Local Government Act 1985 s 88(9). The council designated by a scheme may by giving not less than 12 months' notice to the other constituent councils withdraw its consent to act as the designated council with effect from the end of any financial year not earlier than the second financial year after that in which the scheme was made, and in that event the scheme terminates when the withdrawal takes effect: s 88(11).

9 As provided by the Local Government Act 1985 s 88(3): see the text to note 11.

10 Local Government Act 1985 s 88(2).

11 Local Government Act 1985 s 88(3). The expenditure which is to be so borne does not include any expenditure of the designated council which is recoverable by virtue of s 88(5)(b) (see note 4 head (2)), or if a requirement is imposed by virtue of s 88(5)(b) on all the constituent councils other than the designated council, any expenditure incurred by that council in doing in respect of its own area what it has required the other councils to do in respect of their areas: s 88(6).

For these purposes, the population of any area is to be taken to be the number estimated by the Registrar General and certified by him to the Secretary of State or the Welsh Ministers by reference to such date as he or they may from time to time determine: s 88(4). As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-606. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

12 Local Government Act 1985 s 88(10). This is subject to s 88(8): see note 5.

13 As to the meaning of 'appropriate minister' see PARA 6 note 7.

14 As to the meaning of 'enactment' see PARA 12 note 1.

15 Local Government Act 1972 s 141(2), (3) (s 141(3) as added: see note 2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/543. Reports and returns to the Secretary of State.

543. Reports and returns to the Secretary of State.

Every local authority¹, every joint board² and every joint committee³ of local authorities must send the Secretary of State or the Welsh Ministers⁴ such reports and returns⁵, and give him or them such information with respect to its functions⁶, as he or they may require⁷.

1 For these purposes, 'local authority' includes a joint authority and a joint waste authority: Local Government Act 1972 s 230(2) (added by the Local Government Act 1985 s 84, Sch 14 para 26; amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 18). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq; and as to joint waste authorities see PARA 51 et seq.

2 As to the continuance of, and the application of the Local Government Act 1972 to, joint boards see s 241; and PARA 99.

3 As to the power to establish joint committees see the Local Government Act 1972 s 102; and PARA 371.

4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 In addition to this general power to require reports and returns, the Local Government Act 1972 s 168 requires local financial returns to be made to the Secretary of State: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 634.

6 As to the functions of local authorities see PARA 579 et seq.

7 Local Government Act 1972 s 230(1) (renumbered by the Local Government Act 1985 s 84, Sch 14 para 26). Such reports and returns may also be required by either House of Parliament: see the Local Government Act 1972 s 230(1) (as so renumbered).

UPDATE

543 Reports and returns to the Secretary of State

NOTE 1--Definition of 'local authority' in Local Government Act 1972 s 230(2) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 29.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(ii) Documents and Records/544. Promotion and use of records.

544. Promotion and use of records.

The Local Government (Records) Act 1962 provides that a local authority¹ may do all such things as appear to it necessary or expedient for enabling adequate use to be made of records² under its control³, and in relation to such records may in particular:

- 509 (1) make provision for enabling persons, with or without charge and subject to such conditions as the authority may determine, to inspect the records and to make or obtain copies of them⁴;

- 510 (2) prepare, or procure or assist in the preparation of, indexes and guides to and
calendars and summaries of the records⁵;
- 511 (3) publish, or procure or assist in the publication of, the records or any index or
guide to or calendar or summary of the records⁶;
- 512 (4) hold exhibitions of the records and arrange for the delivery of explanatory
lectures, with or without charging for admission⁷;
- 513 (5) direct that the records be temporarily entrusted to other persons for
exhibition or study⁸.

However, nothing in these provisions authorises the doing of any act which infringes copyright or contravenes conditions subject to which records are under the control of a local authority⁹.

A local authority may contribute a sum equal to the whole or a part of the expenses incurred by any person in doing by arrangement with the authority anything relating to the records under the authority's control which the authority itself was empowered to do¹⁰. Similarly it may contribute to expenses in connection with records not under its control, but which in its opinion are nevertheless of local interest, being expenses incurred by any person in doing any such thing relating to the records as the authority is empowered¹¹ to do in relation to records under its control¹², or being expenses incurred by any person in looking after the records in a case where the local authority is of opinion that reasonable provision is made for enabling persons to inspect and copy them¹³.

Local Acts may be amended or repealed so as to bring provisions that are inconsistent with the provisions of the Local Government (Records) Act 1962 into conformity with that Act or so as to remove provisions that are redundant in light of that Act¹⁴.

1 For the purposes of the Local Government (Records) Act 1962, 'local authority' means the council of a county, county borough, district or London borough, the Broads Authority, the Common Council of the City of London, the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), the Metropolitan Police Authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), an authority established under s 10 (see PARA 17), a parish council or community council, a parish meeting or the Council of the Isles of Scilly: Local Government (Records) Act 1962 s 8(1) (amended by the London Government Act 1963 s 83(1), Sch 17 para 27; the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 ss 84, 102(2), Sch 13, Sch 14 Pt II para 39; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 4; the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 20; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 2; the Police Act 1996 s 103(1), Sch 7 para 1; the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 17, Sch 29 Pt I para 3; SI 1986/148, art 18(2); SI 1990/1765, art 4; and by virtue of the Local Government Act 1972 s 179(1), (3), (4)). As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. The Local Government (Records) Act 1962 applies to a national park authority as it applies to a local authority: see the Environment Act 1995 s 63(5), Sch 7 para 17(1). As to the Council of the Isles of Scilly see PARA 36. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Archives of certain former metropolitan county councils were transferred to district councils by the Local Government Reorganisation (Property etc) (No 2) Order 1986, SI 1986/413, art 6.

2 For these purposes, 'records' means materials in written or other form setting out facts or events or otherwise recording information: Local Government (Records) Act 1962 s 8(1).

3 Local Government (Records) Act 1962 s 1(1). Records are to be treated as being under the control of a local authority if they are in its possession by virtue of s 2 or otherwise, or if the authority has power to give directions as to their custody: s 8(2). As to the duty of a principal council to make proper arrangements for the documents belonging to or in the custody of the council or its officers see the Local Government Act 1972 s 224; and PARA 536. As to the meaning of 'principal council' see PARA 23. As to the custody and care of parish and community documents see s 226; and PARA 537.

4 Local Government (Records) Act 1962 s 1(1)(a).

5 Local Government (Records) Act 1962 s 1(1)(b).

- 6 Local Government (Records) Act 1962 s 1(1)(c).
- 7 Local Government (Records) Act 1962 s 1(1)(d).
- 8 Local Government (Records) Act 1962 s 1(1)(e).
- 9 Local Government (Records) Act 1962 s 1(2). For the law relating to copyright see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS**.
- 10 Local Government (Records) Act 1962 s 4(1)(a).
- 11 le by the Local Government (Records) Act 1962 s 1(1) (see the text and notes 1-8).
- 12 See the Local Government (Records) Act 1962 s 4(1)(b)(i).
- 13 See the Local Government (Records) Act 1962 s 4(1)(b)(ii).
- 14 See the Local Government (Records) Act 1962 s 5.

UPDATE

544 Promotion and use of records

NOTE 1--Definition of 'local authority' in the Local Government (Records) Act 1962 s 8(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 3(3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(iii) Information and Publicity/545. Information for the public.

(iii) Information and Publicity

545. Information for the public.

A local authority¹ may make, or assist in the making of, arrangements by which the public may on application readily obtain, either at premises specially maintained for the purpose or otherwise, information concerning the services available within the authority's area provided either by the authority or by other authorities², government departments or charities and other voluntary organisations³, and other information relating to the functions of the authority⁴. An authority may also: (1) arrange for the publication within its area of information as to the services available in the area provided by it or by other authorities⁵; and (2) for the purpose of broadcasting or distributing relevant information⁶, provide an electronic communications network⁷ or electronic communications service⁸, or arrange with the provider of such a network or service for the broadcasting or distribution of such information by means of the network or service⁹.

A local authority may arrange for the publication within its area of information relating to the functions of the authority¹⁰, the delivery of lectures and addresses and the holding of discussions on such matters¹¹, and the display of pictures, cinematograph films or models or the holding of exhibitions relating to such matters¹². It may prepare, or join in or contribute to the cost of the preparation of, pictures, films, models or exhibitions to be so displayed or held¹³.

A local authority may assist voluntary organisations to provide, for individuals: (1) information and advice concerning their rights and obligations¹⁴; and (2) assistance, either by the making or

receiving of communications or by providing representation to or before any person or body, in asserting those rights or fulfilling those obligations¹⁵.

A local authority¹⁶ may publish information as to rights and duties under legislation relating to rent and related matters¹⁷ and as to the procedure for enforcing those rights or securing the performance of those duties¹⁸. It may also make any such information available in any other way¹⁹, and furnish particulars as to the availability, extent and character of alternative accommodation²⁰.

1 For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 s 142(3). Section 142 has effect as if references to a local authority included references to an authority established under the Local Government Act 1985 s 10 (see PARA 17): see the Local Government Reorganisation (Miscellaneous Provisions) Order 1990, SI 1990/1765, art 4(2) (amended by SI 2000/1553). The Local Government Act 1972 s 142 also has effect as if any reference to a local authority included a reference to the London Fire and Emergency Planning Authority: s 142(4) (added by the Greater London Authority Act 1999 s 328(8), Sch 29 para 17). As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the meaning of 'local authority' generally see PARA 23.

2 In any other local authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), and any authority, board or committee which discharges functions which would otherwise fall to be discharged by two or more local or other such authorities: Local Government Act 1972 s 142(1B) (added by the Local Government Act 1986 s 3; and amended by the Education Reform Act 1988 s 237(2), Sch 13).

3 'Voluntary organisation' means a body which is not a public body, but the activities of which are carried on otherwise than for profit: Local Government Act 1972 s 142(3). As to the meaning of 'public body' see PARA 11 note 1.

4 Local Government Act 1972 s 142(1) (amended by the Local Government Act 1986 s 3).

5 Local Government Act 1972 s 142(1A) (added by the Local Government Act 1986 s 3). The other authorities referred to in the text are those mentioned in the Local Government Act 1972 s 142(1B): see note 2.

6 Information is relevant for these purposes, in relation to a local authority, if it is one or both of the following: (1) information concerning the services within the area of the authority that are provided either by the authority themselves or by other authorities mentioned in s 142(1B) (see note 2); (2) information relating to the functions of the authority: s 142(1AB) (as added: see note 9).

7 As to the meaning of 'electronic communications network' see the Communications Act 2003 s 32 (definition applied by the Local Government Act 1972 s 142(1AC) (as added: see note 9)); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 60.

8 As to the meaning of 'electronic communications service' see the Communications Act 2003 s 32 (definition applied by the Local Government Act 1972 s 142(1AC) (as added: see note 9)); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 60.

9 Local Government Act 1972 s 142(1AA) (s 142(1AA)-(1AC) added by the Communications Act 2003 s 349(2)). Nothing in the Local Government Act 1972 s 142(1AA) entitles a local authority to do anything in contravention of a requirement or restriction imposed by or under: (1) the Wireless Telegraphy Act 2006 Pt 2 (ss 8-53); (2) the Broadcasting Act 1990; (3) the Broadcasting Act 1996; or (4) the Communications Act 2003: Local Government Act 1972 s 142(1AC) (as so added; and amended by the Wireless Telegraphy Act 2006 s 123, Sch 7 para 5). See further **TELECOMMUNICATIONS; TELECOMMUNICATIONS AND BROADCASTING**.

10 Local Government Act 1972 s 142(2)(a) (amended by the Local Government Act 1986 s 3). See *R v Inner London Education Authority, ex p Westminster City Council* [1986] 1 All ER 19, [1986] 1 WLR 28 (advertising campaign against government cuts in expenditure unlawful as intended to influence public opinion as well as inform).

11 Local Government Act 1972 s 142(2)(b).

12 Local Government Act 1972 s 142(2)(c).

13 Local Government Act 1972 s 142(2)(d).

14 Local Government Act 1972 s 142(2A)(a) (s 142(2A) added by the Local Government and Housing Act 1989 s 38).

15 Local Government Act 1972 s 142(2A)(b) (as added: see note 14).

16 For these purposes, 'local authority' means: (1) councils of districts, councils of counties in England in which there are no districts having district councils, and councils of London boroughs; (2) councils of Welsh counties and county boroughs; (3) the Common Council of the City of London; and (4) the Council of the Isles of Scilly: Rent Act 1977 s 149(2) (amended by the Local Government (Wales) Act 1994 s 22(2), Sch 8 para 3(5); and the Local Government Charges (Rent Act) Regulations 1995, SI 1995/2451, reg 7). As to the meaning of 'local authority' generally see PARA 23. As to the Council of the Isles of Scilly see PARA 36.

17 See under the Landlord and Tenant Act 1985 ss 4-7, ss 18-30, the Protection from Eviction Act 1977, the Housing Act 1980 Pt II (ss 51-77), the Housing Act 1988 Pt I Chs I-III (ss 1-26), the Rent (Agriculture) Act 1976, and the Rent Act 1977. See further **LANDLORD AND TENANT**.

18 See the Rent Act 1977 s 149(1)(a), (b); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 816. Councils also have power to publish information regarding rents under restricted contracts and security of tenure under restricted contracts: see s 83(1), (2); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 816.

19 See the Rent Act 1977 s 149(1)(c); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 816.

20 See the Rent Act 1977 s 149(1)(d); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 816.

UPDATE

545 Information for the public

NOTE 2--Local Government Act 1972 s 142(1B) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 20.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(iii) Information and Publicity/546. Publishing of information.

546. Publishing of information.

The Secretary of State or the Welsh Ministers¹ may issue a code of recommended practice as to the publication of information by certain authorities² about the discharge of their functions and other matters, including forecasts, which he or they consider to be related³. Such a code may specify that publication be made in periodical reports or in any other specified manner, the occasions on which such publication is to be made, and the form which such publication is to take⁴. Such a code may also specify steps which authorities are to take to inform the public of the availability of the information⁵. More than one code may be issued, and different codes may deal with different classes of information, different kinds of authority or the same kind of authority in different circumstances or different areas, and different manners, forms or occasions of publication⁶.

The Secretary of State or the Welsh Ministers may make regulations requiring authorities to publish any information specified in a code⁷ in the manner and form specified in the code, if, in his opinion, such regulations are necessary to ensure that the authorities publish the information in the specified manner and form⁸.

Where the occasions specified in a code for the publication of any description of information recur not more often than once a year, the Secretary of State may make regulations requiring authorities to publish information of that description on the occasions specified in the code, if in

his opinion it is necessary to make such regulations in order to ensure that authorities publish information of that description on those occasions⁹. Where the occasions specified in a code for the publication of any description of information recur more often than once a year, the Secretary of State or the Welsh Ministers may make regulations requiring authorities to publish information on the occasions specified in the code if the information is of a description to which this provision applies, and in his or their opinion it is necessary to make such regulations in order to ensure that authorities publish information of that description on the occasions so specified¹⁰.

1 As to the Secretary of State or the Welsh Ministers see PARAS 96-97.

2 The specified authorities are a county council, a county borough council, a district council, a parish council, a parish meeting of a parish which does not have a separate parish council, a community council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a fire and rescue authority constituted by a scheme under the Fire and Rescue Act 2004 s 2 or a scheme to which s 4 of that Act applies (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24), a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (see PARA 47 et seq), a joint waste authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51), the London Fire and Emergency Planning Authority, and any other authority which is a best value authority for the purposes of the Local Government Act 1999 Pt I (ss 1-29) (see PARA 688 et seq): Local Government, Planning and Land Act 1980 s 2(1) (amended by the Local Government Act 1985 ss 84, 102(2), Sch 14 para 59(a), Sch 17; the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 57(1); the Local Government Act 1999 s 20; the Greater London Authority Act 1999 s 328(8), Sch 29 para 28; and the Local Government and Public Involvement in Health Act 2007 ss 136(3), 209(2), Sch 7 para 1, Sch 13 Pt 2 para 36(1), (2)). As from a day to be appointed the Local Government Planning and Land Act 1980 s 2(1) is amended by the Local Government (Wales) Measure 2009 Sch 1 paras 1, 2 to add a reference to any authority which is a Welsh improvement authority for the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-47) (see PARA 711 et seq). At the date at which this volume states the law no such day had been appointed. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to parish councils see PARA 27 et seq; and as to parish meetings see PARA 34. As to community councils see PARA 41 et seq. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**.

3 Local Government, Planning and Land Act 1980 s 2(2). A code may be prepared either by the Secretary of State or the Welsh Ministers or by some other person at his or their request: s 2(4). The Secretary of State or the Welsh Ministers may from time to time revise or request some other person to revise the whole or any part of a code: s 2(5).

4 Local Government, Planning and Land Act 1980 s 2(6). Without prejudice to the generality of s 2(6), a code may specify, as a manner of publishing information: (1) its dispatch with or inclusion in a notice given by virtue of regulations made under the Local Government Finance Act 1992 Sch 2 para 2 (Local Government, Planning and Land Act 1980 s 2(7)(aa)(ii) (added by the local Government Finance Act 1988 137, Sch 12 para 14; substituted by the Local Government Finance Act 1992 s 117(1), Sch 13 para 49)); (2) its inclusion in a statement of accounts prepared by an authority to which this provision applies in accordance with regulations under the Audit Commission Act 1998 s 27 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628) or the Public Audit (Wales) Act 2004 s 39 (Local Government, Planning and Land Act 1980 s 2(7)(b) (amended by the Public Audit (Wales) Act 2004 Sch 2 para 3)); (3) its being made available for inspection by members of the public at an authority's offices or elsewhere (Local Government, Planning and Land Act 1980 s 2(7) (amended by the Local Government Finance Act 1988 s 137, Sch 12 para 14; and the Audit Commission Act 1998 s 54(1), Sch 3 para 5(1))).

5 Local Government, Planning and Land Act 1980 s 2(8). Where a code specifies information as to the cost of the discharge of any of the functions of authorities, it may specify how the cost is to be determined: s 2(9).

6 Local Government, Planning and Land Act 1980 s 2(10).

7 I.e. a code issued under the Local Government, Planning and Land Act 1980 s 2: see the text and notes 1-6.

8 Local Government, Planning and Land Act 1980 s 3(1), (2). Before issuing a code under s 2 or making regulations under s 3, the Secretary of State or the Welsh Ministers must consult such associations of authorities within s 2 (see note 2) as appear to him or to them to be concerned and any such authority with which consultation appears to him or them to be desirable: s 3(11).

Provision may be made by a code or regulations for information to be published to the public in general or to any section of it: s 3(12).

The relevant minister may direct that: (1) development corporations established under the New Towns Act 1981; (2) the Environment Agency; (3) urban development corporations within the meaning of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq); (4) passenger transport executives; and (5) district councils or Welsh county councils or county borough councils carrying on road passenger transport undertakings, must publish information about the discharge of their functions and other matters, including forecasts, which he considers to be related: Local Government, Planning and Land Act 1980 s 4(1), (4) (s 4(4) amended by the New Towns Act 1981 s 81, Sch 12 para 28; the London Regional Transport Act 1984 s 71(3), Sch 7; the Transport Act 1985 s 139(3), Sch 8; the Water Act 1989 s 190, Sch 25 para 61; the Local Government (Wales) Act 1994 Sch 16 para 57(2)(a); the Housing and Regeneration Act 2008 ss 56, 321(1), Sch 8 paras 25, 26, Sch 16; and SI 1996/593). As to development corporations see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1322 et seq. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247. For these purposes, the 'relevant minister' generally means the Secretary of State or the Welsh Ministers: Local Government, Planning and Land Act 1980 s 4(5A), (6) (amended by the Water Act 1989 s 190, Sch 25 para 61).

Different directions may be given to bodies of the same description in different areas: Local Government, Planning and Land Act 1980 s 4(2). A direction under s 4 may specify the manner in which information is to be published, the occasions on which such publication is to be made, and the form which such publication is to take: s 4(3). A direction given to a council under s 4 may only relate to its road passenger transport undertaking: s 4(7) (amended by the Local Government (Wales) Act 1994 s 66(8), Sch 16 para 57(2)(b), Sch 18).

9 Local Government, Planning and Land Act 1980 s 3(3).

10 Local Government, Planning and Land Act 1980 s 3(4). Section 3(4) applies to information: (1) about the discharge of authorities' functions relating to housing or land; (2) about the number of their employees or the number of any description of their employees; and (3) about the determination of applications for planning permission under the Town and Country Planning Act 1990: Local Government, Planning and Land Act 1980 s 3(5) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(1)). The Secretary of State or the Welsh Ministers may by order direct that the Local Government, Planning and Land Act 1980 s 3(4) is to apply to descriptions of information other than those specified in s 3(5) (as so amended): s 3(6).

Any regulations under s 3 and any order under s 3(6) may make different provision in relation to authorities in England and authorities in Wales: s 3(7).

UPDATE

546 Publishing of information

NOTE 1--Local Government, Planning and Land Act 1980 s 2(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 49.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(iii) Information and Publicity/547. Restrictions on publicity.

547. Restrictions on publicity.

A local authority¹ must not publish², or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party³. In determining whether material falls within this prohibition regard must be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed⁴. In particular, regard must be had to whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another⁵, and, where the material is part of a campaign, the effect

which the campaign appears to be designed to achieve⁶. An authority must not give financial or other assistance to a person for the publication of material which the authority is prohibited by these provisions from publishing itself⁷. An authority must keep a separate account of its expenditure on publicity⁸ of which any person interested may at any reasonable time and without payment inspect and make copies⁹.

The restrictions noted above do not apply to anything done by a person in the discharge of any duties under regulations made with regard to access to information¹⁰.

Restrictions also apply with regard to publicity relating to petitions and referendums¹¹.

1 As to the meaning of 'local authority' see PARA 23.

2 'Publicity', 'publish' and 'publication' refer to any communication, in whatever form, addressed to the public at large or a section of it: Local Government Act 1986 s 6(4).

3 Local Government Act 1986 s 2(1) (amended by the Communications Act 2003 s 349(3)).

4 Local Government Act 1986 s 2(2) (substituted by the Local Government Act 1988 s 27(1), (3)).

5 Local Government Act 1986 s 2(2)(a) (as substituted: see note 4).

6 Local Government Act 1986 s 2(2)(b) (as substituted: see note 4).

7 Local Government Act 1986 s 2(3).

8 Local Government Act 1986 s 5(1). The Secretary of State or the Welsh Ministers may by order provide that s 5(1) does not apply to publicity or expenditure of a prescribed description: s 5(5). Before making such an order the Secretary of State or the Welsh Ministers must consult such associations of local authorities as appear to him or to them to be concerned and any local authority with whom consultation appears to him or them to be desirable: s 5(6). As to the order that has been made see the Local Authorities (Publicity Account) (Exemption) Order 1987, SI 1987/2004. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

9 Local Government Act 1986 s 5(2). A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by s 5(2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 5(3). As to the standard scale see PARA 105 note 7.

The regulation-making power conferred by the Audit Commission Act 1998 s 27(1)(e) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628), and the Public Audit (Wales) Act 2004 s 39(1)(e) applies to the right of inspection conferred by the Local Government Act 1986 s 5(2): s 5(4) (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 12; and the Public Audit (Wales) Act 2004 Sch 2 para 6).

10 Local Government Act 1986 s 6(7) (added by SI 2001/2237; SI 2002/808). Regulations made with regard to access to information means regulations made under the Local Government Act 2000 s 22: see PARA 644.

11 See the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, SI 2000/2852, reg 15; the Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001, SI 2001/2292, reg 15; the Local Authorities (Conduct of Referendums) (England) Regulations 2007, SI 2007/2089, reg 5; and the Local Authorities (Conduct of Referendums) (Wales) Regulations 2004, SI 2004/870, reg 5. As to referendums generally see PARAS 313-314; and **ELECTIONS AND REFERENDUMS**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(iii) Information and Publicity/548. Codes of recommended practice as regards publicity.

548. Codes of recommended practice as regards publicity.

The Secretary of State or the Welsh Ministers¹ may issue one or more codes of recommended practice as regards the content, style, distribution and cost of local authority² publicity³, and such other related matters as he thinks or they think appropriate and authorities must have regard to the provisions of any such code in coming to any decision on publicity⁴. Codes may

deal with different kinds of publicity or different kinds of local authority or the same kind of local authority in different circumstances or different areas⁵.

The Secretary of State or the Welsh Ministers may revise or withdraw a code issued under these provisions⁶. However, before issuing, revising or withdrawing a code, he or they must consult such associations of local authorities as appear to him or to them to be concerned and any local authority with whom consultation appears to him or them to be desirable⁷.

- 1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 2 As to the meaning of 'local authority' see PARA 23.
- 3 As to the meaning of 'publicity' see PARA 547 note 2.
- 4 Local Government Act 1986 s 4(1) (amended by the Local Government Act 1988 s 27(2)).
- 5 Local Government Act 1986 s 4(2). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.
- 6 Local Government Act 1986 s 4(3).
- 7 Local Government Act 1986 s 4(4). For procedural matters see further s 4(5), (6).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5.
POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(iv) Polling/549. Polling.

(iv) Polling

549. Polling.

Local authorities¹ have the power to conduct polls to ascertain the views of people about any matter relating to services provided in pursuance of the authority's functions or the authority's expenditure on such services, or any other matter which relates to the authority's well-being powers².

- 1 As to the meaning of 'local authority' for these purposes see PARA 469 note 1.
- 2 See the Local Government Act 2003 s 116; and PARA 469. As to the well-being power see PARA 463 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5.
POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(v) Data Protection, Freedom of Information and Breach of Confidence/550. The Data Protection Act 1998.

(v) Data Protection, Freedom of Information and Breach of Confidence

550. The Data Protection Act 1998.

The type and quantity of information which local authorities hold means that they are often 'data controllers'¹ for the purposes of the Data Protection Act 1998². As such they are subject to the 'data protection principles'³ and the other terms of that act as regards the processing of relevant data⁴.

Separate provision is made: (1) for the processing of personal data and the protection of privacy in the electronic communication sector⁵; and (2) with regard to the control of patient information⁶.

1 As to the meaning of 'data controller' see the Data Protection Act 1998 s 1(1); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 506.

2 The Data Protection Act 1998, which implements EC Council Directive 95/46 (OJ L281, 23.11.95, p 31) on the protection of individuals with regard to the processing of personal data and on the free movement of such data (see **CONFIDENCE AND DATA PROTECTION**), establishes a system of data protection controls for manual as well as computerised data; ensures that personal data is used in accordance with data protection principles; attaches certain conditions to the processing of personal data and adds extra safeguards where the personal data is considered sensitive; establishes certain rights of the data subject; and establishes a framework of notification and enforcement: see generally **CONFIDENCE AND DATA PROTECTION**.

3 As to the data protection principles see the Data Protection Act 1998 s 4, Sch 1; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 507 et seq.

4 See the Data Protection Act 1998; and **CONFIDENCE AND DATA PROTECTION**.

5 See **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 579.

6 **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARAS 577-578.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(v) Data Protection, Freedom of Information and Breach of Confidence/551. Freedom of Information Act 2000.

551. Freedom of Information Act 2000.

The Freedom of Information Act 2000¹ provides for a general right of access to information, and any person making a request for information to a public authority² is entitled: (1) to be informed in writing by the public authority whether it holds that information of the description specified in the request; and (2) if that is the case, to have the information communicated to him³.

1 See **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 et seq.

2 As to the meaning of 'public authority' see the Freedom of Information Act 2000 s 3, Sch 1; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 note 2.

3 Freedom of Information Act 2000 s 1(1); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583. Information obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 s 76 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 615) must be treated for the purposes of the Local Government Act 1974 s 32(2) (see PARA 863) as obtained for the purposes of an investigation under Pt 3 (ss 23-34) and, in relation to such information, the reference in s 32(2)(a) to the investigation must have effect as a reference to any investigation: s 32(7) (added by the Freedom of Information Act 2000 Sch 7 para 3).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(4) INFORMATION/(v) Data Protection, Freedom of Information and Breach of Confidence/552. Breach of confidence, the European Convention on Human Rights and local authorities.

552. Breach of confidence, the European Convention on Human Rights and local authorities.

Where use of information is not constrained by the Data Protection Act 1998¹, it remains unlawful to disclose or use it in breach of an obligation of confidence or a right of privacy², whether at common law or under Article 8 of the European Convention on Human Rights³.

There are three prerequisites of liability for breach of confidence: (1) the material has the necessary quality of confidence; (2) it was communicated or became known in circumstances entailing an obligation of confidence; and (3) there was an unauthorised use of that material⁴.

The fact that information may be confidential does not mean that it can never be used at common law and the limiting principle this implies may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest⁵. If based on confidentiality, the same principles would seem to be applicable to the use of confidential information by a local authority⁶.

A similar balancing approach has been applied by the courts in cases concerning the right to respect for private life under the Human Rights Act 1998⁷.

1 See PARA 550; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 507 et seq.

2 See generally **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 401 et seq.

3 The essential issues at common law or under the European Convention may be the same as 'the two sources of law now run in a single channel': see *Douglas v Hello! Ltd* [2001] QB 967, [2001] 2 All ER 289, [2001] 1 FLR 982, CA (revsd in part [2007] UKHL 21, [2008] 1 AC 1); and *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22, [2004] 2 AC 457, [2004] EMLR 247.

4 See *AG v Guardian Newspapers (No 2)* [1990] 1 AC 109, HL; *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 47-48 per Megarry J; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARAS 402, 482.

5 *A-G v Observer Ltd, A-G v Times Newspapers Ltd* [1990] 1 AC 109, sub nom *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545, HL, per Lord Goff. Lord Griffiths also referred to a balancing exercise carried out by the courts, between 'the public interest in upholding the right to confidence, which is based on the moral principles of loyalty and fair dealing, against some other public interest that will be served by the publication of the confidential material': see *A-G v Observer Ltd, A-G v Times Newspapers Ltd* [1990] 1 AC 109 at 268, HL.

6 See *Woolgar v Chief Constable of Sussex Police* [1999] 3 All ER 604, [2000] 1 WLR 25, CA; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 485.

7 See eg *R(S) v Plymouth City Council* [2002] EWCA Civ 388 at [32], [2002] 1 WLR 2583 at [32], per Hale LJ. As to the right to personal privacy generally see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8; **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARAS 418, 433; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 110.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(5) BYELAWS AND LOCAL LEGISLATION/(i) Making Byelaws/553. Meaning of 'byelaw'.

(5) BYELAWS AND LOCAL LEGISLATION

(i) Making Byelaws

553. Meaning of 'byelaw'.

A byelaw has been said to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance¹. Further, it involves the consequence that, if validly made, it has the force of law within the sphere of its legitimate operation². Byelaws are instruments in the nature of local enactments and are thus within the definition of local statutory provisions³, whether made under a public general or a local Act⁴.

1 *Kruse v Johnson* [1898] 2 QB 91 at 96, DC, per Lord Russell of Killowen CJ. However, all such ordinances are not byelaws, eg Orders in Council and other orders, rules, and regulations made by government departments under statutory authority.

2 *Kruse v Johnson* [1898] 2 QB 91 at 96, DC, per Lord Russell of Killowen CJ. Byelaws made by local authorities must be confirmed by some central authority before having the force of law: see the Local Government Act 1972 s 236(3); and PARA 556. Their function is to supplement the general law: they should not merely repeat statutory enactments: see PARA 562.

3 See Local Government Act 1972 s 270(1); and PARA 6 note 8.

4 See PARAS 12, 14. See also the Interpretation Act 1978 ss 11, 21(1), Sch 2 para 1.

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554. Powers to make byelaws.

Wide powers of legislation for other incidental or minor matters are conferred upon local authorities by numerous statutes which empower them to make byelaws, either dealing with specific matters or generally for the promotion of good order, government, and public health and other amenities in the areas under their control¹. Where an Act which, or any provision of which, does not come into force immediately on its passing confers power to make subordinate legislation (including byelaws²), then, unless the contrary intention appears, the power may be exercised, and any instrument made under it may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose of bringing the Act or any provision of it into force³ or of giving full effect to the Act or any such provision at or after the time when it comes into force⁴.

1 As to byelaws that may be made under the legislation concerning public health see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**; as to byelaws for local authority houses see **HOUSING**; as to byelaws regulating markets and fairs see **MARKETS, FAIRS AND STREET TRADING**; as to byelaws relating to common land and parks see **OPEN SPACES AND COUNTRYSIDE**; as to byelaws regulating behaviour in the streets see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**; and as to byelaws in Greater London see **LONDON GOVERNMENT**. As to the power to revoke byelaws see PARA 559.

2 See the Interpretation Act 1978 s 21(1).

3 See the Interpretation Act 1978 ss 13(a), 22(1), Sch 2 para 3; and **STATUTES** vol 44(1) (Reissue) PARA 1280.

4 See the Interpretation Act 1978 s 13(b), Sch 2 para 3; and **STATUTES** vol 44(1) (Reissue) PARA 1280.

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555. Byelaws for good rule and government and the suppression of nuisances.

The council of a district, the council of a principal area in Wales, the council of a London borough and the Council of the Isles of Scilly may make byelaws for the good rule and government of the whole or any part of the district, principal area, borough or of the Isles of Scilly, as the case may be, and for the prevention and suppression of nuisances there¹. Byelaws may not be made under this power for any purpose as respects any area if provision is made for that purpose as respects that area by, or is or may be made under, any other enactment².

1 Local Government Act 1972 s 235(1) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 49; Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. The confirming authorities in relation to byelaws made under the Local Government Act 1972 s 235 are the Secretary of State or the Welsh Ministers: s 235(2). As to the meaning of 'confirming authority' see PARA 557 note 1. As to the confirmation of byelaws see PARA 557. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Local Government Act 1972 s 235(3). See *Galer v Morrissey* [1955] 1 All ER 380 at 381, [1955] 1 WLR 110 at 113, DC, per Lord Goddard CJ (a byelaw prohibiting the keeping of noisy animals so as to be a nuisance was held not to be ultra vires as duplicating public health legislation, which prohibited the keeping of any animal in such a place or manner as to be prejudicial to health or a nuisance, because a noisy animal may be kept in the most sanitary condition and yet be a nuisance). See also *Mantle v Jordan* [1897] 1 QB 248, DC (profane or obscene language); *Batchelor v Sturley* (1905) 93 LT 539, DC (litter).

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556. Procedure for making byelaws.

Local authorities¹ are subject to statutory requirements as to the making of, and other matters concerning, byelaws².

The byelaws must be made under the common seal of the authority or, in the case of byelaws made by a parish or community council³ not having a seal, under the hands and seals of two members of the council⁴. Byelaws made by the Greater London Authority must be made under the hand of the Mayor⁵. Byelaws do not have effect until they are confirmed by the confirming authority⁶. At least one month before application for confirmation is made, notice of the intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the byelaws are to apply⁷. For at least one month before the application is made, a copy of the byelaws must be deposited at the offices of the authority by which the byelaws are made, and must at all reasonable hours be open to public inspection without payment⁸. The authority by whom the byelaws are made must, on application, furnish to any person a copy of the byelaws, or of any part of them, on payment of such sum as the authority may determine⁹.

1 As to the meaning of 'local authority' see PARA 23.

2 These requirements are contained in the Local Government Act 1972 s 236, which applies to byelaws to be made under that Act and to byelaws made by a local authority, the Greater London Authority, Transport for London or an integrated transport authority for an integrated transport area in England under any other enactment conferring on the authority a power to make byelaws and for which specific provision is not otherwise made: s 236(1) (amended by the Local Government Act 1985 s 84, Sch 14 para 31(1); the Education Reform Act 1988 s 237(1), Sch 12 para 45; the Greater London Authority Act 1999 ss 76(1), (2), 166(1), (2); and

the Local Transport Act 2008 s 77(5), Sch 4 Pt 4 para 48(1), (2)). However, these requirements do not apply to byelaws made under the Airports Act 1986 s 63 (see **AIR LAW** vol 2 (2008) PARA 322); Local Government Act 1972 s 236(2) (amended by the Civil Aviation Act 1982 s 109(2), Sch 15 para 11; the Water Act 1989 s 109(3), Sch 27 Pt I; and prospectively renumbered to become the Local Government Act 1972 s 236(2)(b) by the Local Government and Public Involvement in Health Act 2007 s 129(1), (2)); Interpretation Act 1978 s 17(2). Further, as from a day to be appointed, these requirements do not apply to byelaws of a class prescribed by regulations under the Local Government Act 1972 s 236A (see PARA 558): s 236(2)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 129(1), (2)). At the date at which this volume states the law no such day had been appointed. As to the Greater London Authority see **LONDON GOVERNMENT**. As to Transport for London see **LONDON GOVERNMENT; ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 246.

3 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

4 Local Government Act 1972 s 236(3) (amended by SI 2001/3179).

5 Local Government Act 1972 s 236(3A) (added by SI 2001/3719). As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

6 Local Government Act 1972 s 236(3), (3A). As to the meaning of 'confirming authority' see PARA 557 note 1. As to the confirmation of byelaws see PARA 557.

7 Local Government Act 1972 s 236(4). In the Isles of Scilly public notice must instead be given in each parish to which the byelaws are to apply: see s 236(4); and the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule. As to the Council of the Isles of Scilly see PARA 36.

8 Local Government Act 1972 s 236(5).

9 Local Government Act 1972 s 236(6). The sum must not exceed 10p for every hundred words contained in the copy: s 236(6). As to copies of byelaws that have been confirmed see PARA 557.

UPDATE

556 Procedure for making byelaws

NOTE 2--Local Government Act 1972 s 236(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 34.

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557. Confirmation of byelaws.

The confirming authority¹ may confirm, or refuse to confirm, any byelaw submitted for confirmation², and may fix the date on which the byelaw is to come into operation³. If no date is so fixed the byelaw comes into operation at the expiration of one month from the date of its confirmation⁴.

A copy of the byelaws, when confirmed, must be printed and deposited at the offices of the authority by which the byelaws are made, and must at all reasonable hours be open to public inspection without payment; and a copy of them must, on application, be furnished to any person on payment of such sum as the authority may determine⁵.

The proper officer⁶ of a district council or, in Wales, the proper officer of a principal council⁷ must send a copy of every byelaw made by the council, and confirmed, to the proper officer of the council of every parish or community to which they apply or, in the case of a parish not having a council, to the chairman of the parish meeting⁸. The proper officer of the parish or community council⁹ or chairman of the parish meeting, as the case may be, must cause a copy

to be deposited with the public documents of the parish or community¹⁰, and a copy so deposited must at all reasonable hours be open to public inspection without payment¹¹.

The proper officer of a county council must send a copy of every byelaw made by the council, and confirmed, to the council of every district¹² in the county¹³, and the proper officer of a district council must send a copy of every byelaw made by the council, and confirmed, to the county council¹⁴. The Greater London Authority must send a copy of every byelaw made by it, and confirmed, to each London borough council and the Common Council of the City of London¹⁵. Transport for London¹⁶ must send a copy of every byelaw made by it, and confirmed, to the Mayor of London¹⁷, each London borough council, and the Common Council of the City of London¹⁸.

1 In the case of all local authority byelaws, the 'confirming authority' means the authority or person, if any, specified in the enactment under which the byelaws are made (or in any enactment incorporated in them or applied by them) as the authority or person by whom they are to be confirmed, or, if no one is so specified, the Secretary of State: Local Government Act 1972 s 236(11). In relation to Wales, the functions of the Secretary of State under the Local Government Act 1972 s 236(11) are exercisable by the Welsh Ministers concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 le under the Local Government Act 1972 s 236: see PARA 556.

3 Local Government Act 1972 s 236(7). Confirmation does not, however, render valid a byelaw which is in other respects invalid: *Elwood v Bullock* (1844) 6 QB 383; *R v Wood* (1855) 5 E & B 49; *Kruse v Johnson* [1898] 2 QB 91, DC.

4 Local Government Act 1972 s 236(7).

5 Local Government Act 1972 s 236(8). The sum must not exceed 20p for every copy: s 236(8). Non-compliance with this provision would not render the byelaws invalid: *Duncan v Knill* (1907) 96 LT 911.

6 As to the proper officer see PARA 431.

7 As to the meaning of 'principal council' see PARA 23.

8 Local Government Act 1972 s 236(9) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 50). As to parish meetings see PARA 34.

9 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

10 Local Government Act 1972 s 236(9) (as amended: see note 8).

11 Local Government Act 1972 s 236(9) (as amended: see note 8).

12 As to the meaning of 'district' see PARA 24 note 5.

13 As to the meaning of 'county' see PARA 24 note 5.

14 Local Government Act 1972 s 236(10). Section 236(10) does not apply to a principal council in Wales: s 236(10A) (added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 paras 1, 50).

15 Local Government Act 1972 s 236(10B) (added by the Greater London Authority Act 1999 s 76(1), (3)). As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

16 As to Transport for London see **LONDON GOVERNMENT; ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 246.

17 As to the Mayor of London see **LONDON GOVERNMENT**.

18 Local Government Act 1972 s 236(10C) (added by the Greater London Authority Act 1999 s 166(1), (3)).

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558. Alternative procedure for making byelaws.

As from a day to be appointed the following provisions have effect¹. The Secretary of State² may, in relation to England, by regulations prescribe classes of byelaws to which the standard procedure³ does not apply⁴, and make provision about the procedure for the making and coming into force of such byelaws⁵.

The regulations may prescribe a class of byelaws by reference, in particular, to one or more of the following⁶:

- 514 (1) the enactment under which byelaws are made⁷;
- 515 (2) the subject matter of byelaws⁸;
- 516 (3) the authority by whom byelaws are made⁹;
- 517 (4) the authority or person by whom byelaws are confirmed¹⁰.

They may, in particular, include provision about consultation to be undertaken before a byelaw is made¹¹, and publicising a byelaw after it is made¹².

The regulations may make:

- 518 (a) such incidental, consequential, transitional or supplemental provision (including provision amending, repealing or revoking enactments) as the Secretary of State considers appropriate¹³; and
- 519 (b) different provision for different areas, including different provision for different localities and for different authorities¹⁴.

1 As from a day to be appointed the Local Government Act 1972 ss 236A, 237E are added by the Local Government and Public Involvement in Health Act 2007 ss 129(1), (3), 132 and come into force on a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 96.

3 Ie byelaws to which the Local Government Act 1972 s 236 (see PARA 556) does not apply: see s 236A(1)(a) (as prospectively added: see note 1).

4 Local Government Act 1972 s 236A(1)(a) (as prospectively added: see note 1). At the date at which this volume states the law no such regulations had been made.

5 Local Government Act 1972 s 236A(1)(b) (as prospectively added: see note 1). Regulations may not be made under s 236A(1) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament: s 236A(5) (as so prospectively added). An authority which makes byelaws of a class prescribed by regulations under s 236A must have regard to any guidance issued by the Secretary of State about procedure, or any related matter: see s 237E(a), (c) (as so prospectively added).

6 Local Government Act 1972 s 236A(2) (as prospectively added: see note 1).

7 Local Government Act 1972 s 236A(2)(a) (as prospectively added: see note 1).

8 Local Government Act 1972 s 236A(2)(b) (as prospectively added: see note 1).

9 Local Government Act 1972 s 236A(2)(c) (as prospectively added: see note 1).

10 Local Government Act 1972 s 236A(2)(d) (as prospectively added: see note 1).

11 Local Government Act 1972 s 236A(3)(a) (as prospectively added: see note 1).

12 Local Government Act 1972 s 236A(3)(b) (as prospectively added: see note 1).

13 Local Government Act 1972 s 236A(4)(a) (as prospectively added: see note 1).

14 Local Government Act 1972 s 236A(4)(b) (as prospectively added: see note 1).

UPDATE

558-559 Alternative procedure for making byelaws, Revocation of byelaws

These provisions have effect as from 27 January 2010: SI 2010/112.

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Revocation of Byelaws/559. Revocation of byelaws.

(ii) Revocation of Byelaws

559. Revocation of byelaws.

The power to make byelaws¹ implies, unless the contrary intention appears, a power to revoke, amend or re-enact them in the same manner and subject to the same conditions or limitations².

As from a day to be appointed, the following provisions have effect³. A relevant authority⁴ may make a byelaw to revoke a byelaw made by the authority⁵. However, this power may be exercised only where the authority has no other power to revoke the byelaw⁶.

The Secretary of State or the Welsh Ministers may by order revoke any byelaw which appears to him or to them to have become spent, obsolete or unnecessary⁷.

Such an order may make:

- 520 (1) such incidental, consequential, transitional or supplemental provision (including provision amending, repealing or revoking enactments) as the person making the order considers appropriate⁸; and
- 521 (2) different provision for different areas, including different provision for different localities and for different authorities⁹.

1 See PARA 554.

2 *R v Ashwell* (1810) 12 East 22; *R v Westwood* (1825) 4 B & C 781 at 806-807 (affd sub nom *Lovell v Westwood* (1830) 2 Dow & Cl 21, HL). See also the Interpretation Act 1978 s 14, Sch 2 para 3; and **STATUTES** vol 44(1) (Reissue) PARAS 1338, 1526.

3 As from a day to be appointed the Local Government Act 1972 s 236B is added by the Local Government and Public Involvement in Health Act 2007 s 134, and comes into force on a day to be appointed under s 245(5). At the date at which this volume states the law no such day had been appointed.

4 For these purposes a 'relevant authority' is a local authority, the Greater London Authority, Transport for London, and an Integrated Transport Authority for an integrated transport area in England: Local Government Act 1972 s 236B(1) (as prospectively added (see note 3); and amended by the Local Transport Act 2008 s 77(5), Sch 4 Pt 4 para 48(1), (3)). As to the meaning of 'local authority' see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to Transport for London see **LONDON GOVERNMENT; ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 246.

5 Local Government Act 1972 s 236B(2) (as prospectively added: see note 3). The confirming authority in relation to a byelaw made under s 236B is: (1) in relation to a byelaw made by a local authority in Wales, the Welsh Ministers; and (2) in relation to any other byelaw, the Secretary of State: s 236B(4). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 Local Government Act 1972 s 236B(3) (as prospectively added: see note 3).

7 Local Government Act 1972 s 236B(5), (6) (as prospectively added: see note 3). A statutory instrument containing an order under s 236B which amends or repeals any provision of an Act may not be made by the Secretary of State unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament, or by the Welsh Ministers unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales: s 236B(8), (10) (as so prospectively added). Otherwise, a statutory instrument containing an order made by the Secretary of State or the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of either House of Parliament or the National Assembly for Wales, as appropriate: s 236B(9), (11) (as so prospectively added).

8 Local Government Act 1972 s 236B(7)(a) (as prospectively added: see note 3).

9 Local Government Act 1972 s 236B(7)(b) (as prospectively added: see note 3).

UPDATE

558-559 Alternative procedure for making byelaws, Revocation of byelaws

These provisions have effect as from 27 January 2010: SI 2010/112.

559 Revocation of byelaws

NOTE 4--Local Government Act 1972 s 236B(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 35.

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(iii) Validity of Byelaws

560. Validity of byelaws generally.

Four elements are essential to the validity of a byelaw: (1) it must be within the powers of the local authority which makes it¹; (2) it must not be repugnant to the law of England²; (3) it must be certain and positive in its terms³; and (4) it must be reasonable⁴. If a byelaw can be divided into separate and distinct parts it may be upheld in part even if the rest is bad⁵. A byelaw ceases to be operative upon the repeal of the statute under which it was made unless it is preserved by the repealing statute⁶. A byelaw which has not been enforced for a long period may nevertheless be relied on in civil proceedings⁷.

1 See PARA 561.

2 See PARA 562.

3 See PARA 563.

4 See PARA 564.

5 *Dodwell v Oxford University* (1680) 2 Vent 33; *Fazakerley v Wiltshire* (1721) 1 Stra 462; *Lee v Wallis* (1756) 1 Keny 292; *R v Faversham Fishermen's Co* (1799) 8 Term Rep 352; *R v Lundie* (1862) 8 Jur NS 640; *Reay v Gateshead Corp* (1886) 55 LT 92, DC; *Strickland v Hayes* [1896] 1 QB 290, 60 JP 164, DC. See also *Olsen v City of Camberwell* [1926] VLR 58, Vict FC. In *DPP v Hutchinson*; *DPP v Smith* [1990] 2 AC 783 at 804, HL, Lord Bridge of Harwich: 'A legislative instrument is textually severable if a clause, a sentence or phrase or a single word may be disregarded, as exceeding the law-maker's power, and what remains of the text is still grammatical and coherent. A legislative instrument is substantially severable if the substance of what remains after severance is essentially unchanged in its legislative purpose, operation and effect.'

6 *Watson v Winch* [1916] 1 KB 688, 14 LGR 486, DC. As to the savings for byelaws under the Local Government Act 1972 upon the reorganisation of local government see PARA 14. See also PARA 559.

7 *The Ladywell v Port of London Authority* [1958] 2 Lloyd's Rep 24 at 32-33 per Willmer J, citing *Pells & Son v Port of London Authority* (1920) 2 Ll L Rep 327.

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Validity of Byelaws/561. Byelaws must be intra vires.

561. Byelaws must be intra vires.

A byelaw is invalid if it is not within the powers of the local authority which makes it¹. A local authority cannot by byelaw invest itself with power beyond that conferred on it by statute², nor may byelaws prohibit what the empowering enactment sought merely to regulate³, or order one thing under a power to order another⁴.

1 As to the ultra vires doctrine see PARA 461.

2 *Brown v Holyhead Local Board of Health* (1862) 1 H & C 601 at 606 per Pollock CB; *Smith v Great Yarmouth Port and Haven Comrs* (1919) 88 LJB 1190, DC. See also *R v Broad* [1915] AC 1110, PC.

3 *Calder and Hebble Navigation Co v Pilling* (1845) 14 M & W 76; *Pidler v Berry* (1888) 59 LT 230, DC; *Wood v Venton* (1890) 54 JP 662, DC; *Byrne v Brown* (1893) 57 JP Jo 741, DC; *Parker v Bournemouth Corp* (1902) 86 LT 449, DC; *Clayton v Peirse* [1904] 1 KB 424; *Moorman v Tordoff* (1908) 98 LT 416, DC.

4 *R v Wood* (1855) 5 E & B 49; *Waite v Garston Local Board* (1867) LR 3 QB 5; *Robinson v Barton-Eccles Local Board* (1883) 8 App Cas 798, HL; *Rudland v Sunderland Corp* (1884) 52 LT 617, DC; *Parker v Clegg* (1903) 2 LGR 608, DC.

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Validity of Byelaws/562. Byelaws must not be repugnant to the general law.

562. Byelaws must not be repugnant to the general law.

A byelaw is invalid if it is repugnant to the general law of England. It is not bad merely because it deals with something with which the general law does not deal, or because it makes unlawful something which the general law does not make unlawful, or if it adds something which is not inconsistent with the general law, but it must not, expressly or by necessary implication, profess to alter the general law by making something unlawful which the general law makes lawful, or vice versa, or by adding something inconsistent with the provisions of a statute creating the same offence¹, or by depriving a defendant of a defence he would have under the general law². A byelaw adds something to the general law³, but it must not be contrary to⁴ or inconsistent with it⁵.

A byelaw is not necessarily inconsistent with the general law merely because it is more stringent⁶ or more detailed in its demands⁷. Where a statute requires in an offence a particular element, that element must, it seems, be present also in a corresponding offence under byelaws⁸, and a penalty imposed by statute for an offence may not be increased by byelaw⁹.

1 *White v Morley* [1899] 2 QB 34 at 39, DC, per Channell J; *Gentel v Rapps* [1902] 1 KB 160 at 166 per Channell J; *Powell v May* [1946] KB 330 at 335, [1946] 1 All ER 444 at 445, DC, per Lord Goddard CJ. See also *Eldridge v British Airports Authority* [1970] 2 QB 387, [1970] 2 All ER 92, DC.

2 *Strickland v Hayes* [1896] 1 QB 290, DC; *Powell v May* [1946] KB 330, [1946] 1 All ER 444, DC.

3 *R v Saddlers' Co* (1861) 3 E & E 72 at 80, Ex Ch, per Martin J; decision revsd (1863) 10 HL Cas 404.

4 *London's Chamberlain Case* (1590) 5 Co Rep 62b at 63a.

5 *Edmonds v Master and Senior Warden of the Company of Watermen and Lightermen* (1855) 24 LJM 124. It is inconsistent where it imposes in all cases a penalty which by statute may be imposed only in cases of fraud (*Dearden v Townsend* (1865) LR 1 QB 10; *Bentham v Hoyle* (1878) 3 QBD 289, DC; *London and Brighton Rly Co v Watson* (1879) 4 CPD 118, CA; *Tuffley v Tate* (1906) 96 LT 24, DC), or where it requires of an elector a voting qualification which the general law does not require (*Purves v Wimbledon and Putney Commons Conservators* (1890) 62 LT 529). See also *Torquay Local Board v Bridle* (1882) 47 JP 183, DC (where a byelaw which prohibited a person from permitting his fowl to enter an unfenced pleasure ground was held to be repugnant to the general law).

6 *Thomas v Sutters* [1900] 1 Ch 10, CA, where a byelaw that no person should frequent any street for betting was held not repugnant to legislation which forbade three or more persons to assemble in a street for betting; *Da Prato v Provost Partick* [1907] AC 153, HL.

7 *Batchelor v Sturley* (1905) 93 LT 539, DC (litter: see now the Litter Act 1983); *Leyton UDC v Chew* [1907] 2 KB 283, 5 LGR 837, DC, cited in PARA 563 note 1.

8 *Strickland v Hayes* [1896] 1 QB 290, DC, where a byelaw prohibiting a nuisance was held invalid as the offence did not depend upon there being the annoyance required by statute. A similar byelaw was, however, upheld in *Gentel v Rapps* [1902] 1 KB 160. See also *Thomas v Sutters* [1900] 1 Ch 10, CA; *Powell v May* [1946] KB 330, [1946] 1 All ER 444, DC.

9 *Calder and Hebble Navigation Co v Pilling* (1845) 14 M & W 76.

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563. Byelaws must be certain.

A byelaw must provide a clear statement of the course of action which it requires to be followed or avoided, and must contain adequate information as to the duties and identity of those who are to obey, although all the information need not be apparent on the face of the byelaw¹. However, if the words of the byelaw are ambiguous but their meaning can be resolved to give a reasonable result the courts will give effect to that result². Any penalty provided must also be expressed with certainty³.

1 *Kruse v Johnson* [1898] 2 QB 91 at 108, DC, per Mathew J; *Nash v Finlay* (1901) 85 LT 682 at 683, DC, per Lord Alverstone CJ, where a byelaw that 'no person shall wilfully annoy passengers in the streets' was held void for uncertainty as not showing what it was intended to prohibit. In *A-G v Denby* [1925] Ch 596, a byelaw prohibiting building in a certain space above ground level but not showing how ground level was to be ascertained was held to be uncertain in its application to a hilly site. See also *Blackpool Board of Health v Bennett* (1859) 4 H & N 127, where a byelaw was upheld as sufficiently certain in specifying as carriage stands places where signs 'shall from time to time be placed'; *Martin v Clarke* (1893) 62 LJM 178, DC, where a byelaw was upheld which required a coal cart to carry a weighing machine of an approved form without precisely

identifying it; *Leyton UDC v Chew* [1907] 2 KB 283, DC, where a byelaw was upheld which, after specifying the use of a certain building method and material, permitted the use of other suitable methods and materials.

2 In *London and North Eastern Ry Co v Berriman* [1946] AC 278 at 313-314, [1946] 1 All ER 255 at 270, HL, Lord Simonds declared that a man is not to be put in peril upon an ambiguity, and quoted with approbation Lord Esher MR in *Tuck & Sons v Priester* (1887) 19 QBD 629 at 638, CA: 'If there is a reasonable interpretation which would avoid the penalty . . . we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections'. In *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 677, [1960] 3 All ER 503 at 517, HL, Lord Denning (obiter), after declaring that in relation to the principles of interpretation there is no difference between planning conditions and byelaws, said: 'I can well understand that a byelaw will be void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning. But if the uncertainty stems only from the fact that the words of the byelaw are ambiguous it is well settled that it must if possible be given such a meaning as to make it reasonable and valid rather than unreasonable and invalid'. Applied with approval by the Court of Appeal in *Percy v Hall* [1997] QB 924 at 943A-B per Simon Brown LJ, [1996] 4 All ER 523. See also *R v Powell* (1884) 48 JP 740, DC.

3 A byelaw which fixes a maximum penalty and provides a power of mitigation was held to be sufficiently certain in *Piper v Chappell* (1845) 14 M & W 624.

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POWERS AND DUTIES OF LOCAL AUTHORITIES/(5) BYELAWS AND LOCAL LEGISLATION/(iii)
Validity of Byelaws/564. Byelaws must be reasonable.

564. Byelaws must be reasonable.

To be valid, a byelaw must be reasonable¹. Unless it is manifestly unjust², capricious³, inequitable or partial⁴ in its operation, or involves oppressive gratuitous interference with the rights of those subject to it, the question of its reasonableness is one to be decided by the authority making it⁵. Where a thing is of such a character that in law it can be a nuisance, it rests with the local authority to say whether it is to be considered a nuisance in its area and whether it is to be forbidden by byelaw⁶. The onus of proof that a byelaw is unreasonable rests upon the person who makes such an assertion⁷.

1 Each byelaw must be considered in the light of the statutory power under which it is made and of the language used: *Gray v Sylvester* (1897) 61 JP 807, DC, per Lindley MR.

Where on a case stated there is nothing to show what was the finding of fact by the magistrates on which they decided that a byelaw was unreasonable, the case must be sent back for them to convict: *Onions v Clarke* (1917) 86 LJB 740.

2 Byelaws imposing on landlords a duty to clean certain houses were held unreasonable where they did not provide for the giving of notices of non-compliance (*Nokes v Islington Corp* [1904] 1 KB 610, 2 LGR 334; *Stiles v Galinski, Nokes v Islington Corp* (No 2) [1904] 1 KB 615, 2 LGR 341, DC), or where they applied to a landlord who had not reserved a power of entry (*Arlidge v Islington Corp* [1909] 2 KB 127, 7 LGR 649, DC).

3 A byelaw prohibiting the use of steam or mechanical instruments in a borough was upheld even though it did not exempt small instruments in private houses: *Southend-on-Sea Corp v Davis* (1900) 16 TLR 167, DC. A byelaw prohibiting street sales of newspapers wholly or mainly devoted to racing was held unreasonable as it might include papers giving perfectly legal information: *Scott v Pilliner* [1904] 2 KB 855, 2 LGR 1018, DC. A byelaw is not unreasonable because in a particular case inconvenient consequences may arise from its enforcement: *Simmons v Mallory RDC* [1897] 2 QB 433 at 438, DC, per Wright J.

4 Byelaws should not improperly discriminate between different classes (see *Kruse v Johnson* [1898] 2 QB 91, DC), except in special circumstances. In *Mitcham Common Conservators v Cox, Mitcham Common Conservators v Cole* [1911] 2 KB 854, 9 LGR 843, DC, a byelaw regulating the playing of golf on part of a metropolitan common maintained by a golf club and reserving the playing of golf exclusively to club members and local inhabitants was held to be void as preferential; and this byelaw, subsequently amended so that the reservation operated only at certain times, was upheld in *Harris v Harrison* (1914) 111 LT 534, 12 LGR 1304, DC. See **COMMONS** vol 13 (2009) PARA 586. A byelaw regulating the method of slaughter in slaughterhouses is not unreasonable in providing exceptions on religious grounds to a particular class: *Dodd v Venner* (1922) 127

LT 746, 20 LGR 574, DC. As to slaughter by religious methods see **FOOD** vol 18(2) (Reissue) PARA 502. As to the reservation to the authority of arbitrary rights see PARA 566.

5 *Slattery v Naylor* (1888) 13 App Cas 446, PC; *Kruse v Johnson* [1898] 2 QB 91, DC. A byelaw is not unreasonable merely because particular judges think it goes further than is prudent, necessary or convenient; the elected representatives of a local authority understand the requirements of their locality better than judges: *Kruse v Johnson* at 100 per Lord Russell of Killowen CJ.

The following prohibitive byelaws, where the causing of nuisance or annoyance was not made a condition precedent, have been held unreasonable: unlicensed entertainment booth in a street (*Elwood v Bullock* (1844) 6 QB 383); Sunday street music (*Johnson v Croydon Corp* (1886) 16 QBD 708, DC); street trading by children at night (*Macdonald v Lochrane* (1887) 51 JP 629, DC); unlicensed music or preaching in a street (*Munro v Watson* (1887) 51 JP 660, DC); obscene language in a street (*Strickland v Hayes* [1896] 1 QB 290, 60 JP 164, DC); keeping swine in a borough (*Everett v Grapes* (1861) 3 LT 669, 25 JP 644); unlicensed standing of a vehicle on a common (*Nash v Manning* (1894) 58 JP 718, DC).

The following are examples of prohibitive byelaws which have been held reasonable: roundabout and steam organ near a street to the annoyance of residents (*Teale v Harris* (1896) 60 JP 744, DC); keeping swine near a dwelling house (*Wanstead Local Board of Health v Wooster* (1873) 38 JP 21, holding that proof of nuisance was unnecessary); singing near a dwelling house after a request by a constable or inmate to desist (*Kruse v Johnson* [1898] 2 QB 91, 62 JP 469, DC, holding that proof of nuisance was unnecessary; *R v Powell* (1884) 48 JP 740, holding that it is for the justices to decide whether the request to desist was reasonable); making speeches on a common without permission (*De Morgan v Metropolitan Board of Works* (1880) 5 QBD 155, 44 JP 296, DC); making speeches other than on land appointed for it (*Slee v Meadows* (1911) 105 LT 127, DC); violent or obscene language to the annoyance of any person (*Mantle v Jordan* [1897] 1 QB 248, 61 JP 119, DC); frequenting a place of public resort for bookmaking (*Kitson v Ashe* [1899] 1 QB 425, 63 JP 325, DC); driving a vehicle in a park despite the granting of a right to do so by the authority's predecessors in title in a conveyance of adjoining land (*A-G v Hodgson* [1922] 2 Ch 429, 20 LGR 425); and causing a dog, other than a guide dog in the charge of a blind person, to enter or remain in pleasure grounds (*Burnley Borough Council v England* (1978) 77 LGR 227, (1978) Times, 15 July, granting an injunction to restrain further breach). See also *Belfast Corp v Daly* [1963] NI 78, NI CA.

6 *White v Morley* [1899] 2 QB 34 at 39, DC, per Channell J. Byelaws prohibiting the keeping of pigs near dwelling houses have been held to be reasonable in a town (*Wanstead Local Board of Health v Wooster* (1873) 38 JP 21), but unreasonable in the country (*Heap v Burnley Union Sanitary Authority* (1884) 12 QBD 617, sub nom *Heap v Burnley Local Board* (1884) 48 JP 359). As to the law of nuisance see **NUISANCE** vol 78 (2010) PARA 101 et seq.

7 *Belfast Corp v Daly* [1963] NI 78 at 85, NI CA, per Lord MacDermott CJ, quoting Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 at 228, [1947] 2 All ER 680 at 682, CA: 'It is for those who assert that the local authority has contravened the law to establish that proposition'.

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565. Reasonableness of byelaws in restraint of trade.

Byelaws in restraint of trade are bad unless there are customs to support them¹, and in the absence of express power of prohibition a local authority may not forbid the pursuit of a lawful trade in a lawful manner². Byelaws for the regulation of trade which involve a partial restraint are not necessarily unreasonable³. Notwithstanding any custom or byelaw, however, every person in any borough⁴ may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery and handicraft for hire, gain, sale or otherwise within any borough⁵.

1 *Hesketh v Braddock* (1766) 3 Burr 1847; *Clark v Le Cren* (1829) 9 B & C 52; *Clark v Denton* (1830) 1 B & Ad 92; *Shaw v Pope* (1831) 2 B & Ad 465; *Shaw v Poynter* (1834) 2 Ad & El 312; *Elwood v Bullock* (1844) 6 QB 383. The byelaw must not exceed the terms of the custom: *Wood v Searl* (1618) J Bridg 139; *R v Tappenden* (1802) 3 East 186. As to freedom of trade and restraint of trade see **COMPETITION** vol 18 (2009) PARA 377 et seq.

2 *City of Toronto Municipal Corp'n v Virgo* [1896] AC 88, PC. See also *Wortley v Nottingham Local Board* (1869) 21 LT 582. Where there is an express power to prohibit an act, the reservation by byelaw of an arbitrary power to permit it was reasonable: *Williams v Weston-super-Mare UDC* (1909) 74 JP 52; affd (1910) 103 LT 9, 8 LGR 843, CA. It is, however, unlikely that a confirming authority would confirm such a power of exemption in the absence of most compelling reasons. See also PARA 566.

3 Byelaws were upheld which regulated the number of spindles to be made in a week (*Freemantle v Silk Throwsters' Co* (1668) 1 Lev 229) or the number of carts in a city (*Player v Jones* (1669) 1 Vent 21), or which prohibited trading on the beach or foreshore of a small town but not elsewhere (*Gray v Sylvester* (1897) 61 JP 807, DC; *Cassell v Jones* (1913) 108 LT 806, 11 LGR 488, DC; but see *Moorman v Tordoff* (1908) 72 JP 142, 6 LGR 360, DC), or which prohibited the mooring of vessels at a quay for the embarkation of passengers so long as the authority maintained and permitted passengers to use, on payment of a fee permitted under another power, a pier giving access from the quay to a vessel (*Everton v Walker* (1927) 137 LT 594, 25 LGR 333, DC). See also *Bodwic v Fennell* (1748) 1 Wils 233; *Savage v Brook* (1863) 15 CBNS 264; *Strike v Collins* (1886) 55 LT 182, DC; *Scott v Glasgow Corp'n* [1899] AC 470, 64 JP 132, HL; *Rossi v Edinburgh Corp'n* [1905] AC 21, HL; *Da Prato v Provost Partick* [1907] AC 153, HL. A local authority may not, under the pretence of regulating, go to the length of prohibiting: *Cassell v Jones* (1913) 108 LT 806, 11 LGR 488, DC. A byelaw regulating an industry which, whilst hampering it, does not prevent its being carried on, is not unreasonable: *Sutton Harbour Improvement Co v Foster* (1920) 89 LJB 829, DC; *Sutton Harbour Improvement Co v Foster (No 2)* (1920) 89 LJ Ch 540, CA. The regulation and the restraint of trade must be distinguished: see *Pierce v Bartrum* (1775) 1 Cowp 269.

4 As to the abolition of boroughs, other than London boroughs, see PARA 5. Although a district may be granted borough status by charter (see PARAS 25, 38, 107), it is not treated as a borough for the purposes of any Act passed before 1 April 1974: see the Local Government Act 1972 s 245(5); and PARA 25.

5 See the Municipal Corporations Act 1882 s 247. See also **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 646. This enactment does not prevent the making of byelaws regulating trade, but it must be interpreted in the light of town planning legislation: see **TOWN AND COUNTRY PLANNING**.

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Validity of Byelaws/566. Reservation of right to make exemptions.

566. Reservation of right to make exemptions.

A byelaw which does not reserve to the local authority the power to exempt exceptional cases from its operation is not necessarily unreasonable, for the magistrates may always order an absolute or conditional discharge¹. The reservation of a power of exemption does not render valid a byelaw otherwise invalid². The authority may not waive the requirements of its byelaws³ unless it has reserved a discretionary power⁴. A local authority may not enter into a binding contract not to make or enforce a byelaw⁵.

1 See *Salt v Scott Hall* [1903] 2 KB 245, DC. In *Townsend's (Builders) Ltd v Cinema News and Property Management Ltd (David A Wilkie & Partners, third party)* [1959] 1 All ER 7 at 14, [1959] 1 WLR 119 at 127, CA, Sellers LJ (obiter) adopted the declaration of Channell J in *Salt v Scott Hall*, that byelaws relating to the construction of buildings should contain a dispensing power. Such byelaws are, however, no longer authorised: see note 3.

2 *Waite v Garston Local Board* (1867) LR 3 QB 5.

3 *Baxter v Bedford Corp'n* (1885) 1 TLR 424; *R v Newcastle-upon-Tyne Corp'n* (1889) 60 LT 963, DC; *Re McIntosh and Pontypridd Improvements Co* (1891) 61 LJB 164, DC (affd (1892) 8 TLR 203, CA). Approval of building plans contravening byelaws was held illegal and inoperative in *Yabbicom v King* [1899] 1 QB 444, 63 JP 149, DC. However, building control is now the subject of regulations instead of byelaws: see **BUILDING**.

4 In the absence of most compelling reasons the confirming authority does not confirm byelaws reserving to local authorities or their officers any discretionary power of exemption, although there may in some instances be statutory recognition of a power of exemption. See *Parker v Bournemouth Corp'n* (1902) 86 LT 449, DC, where the reservation of an arbitrary power to refuse to grant a licence was held to be unreasonable.

5 *William Bean & Sons v Flaxton RDC* [1929] 1 KB 450, 26 LGR 335, CA; *William Cory & Son Ltd v London Corpn* [1951] 2 KB 476, [1951] 2 All ER 85, CA.

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(iv) Construction and Enforcement of Byelaws

567. Construction of byelaws.

Byelaws made by elected representative local authorities should be interpreted benevolently and upheld if possible¹. They should be so construed as to give reasonable effect to the reasonable object intended². If on one construction a byelaw is good but on another bad, the former should prevail³; if in terms it conflicts with the statute under which it is made it should, if possible, be reconciled with it, but if it cannot be reconciled it is bad⁴. Where a byelaw is in part good and in part bad and it is severable it may be upheld in part⁵. Unless the contrary intention appears, expressions used in byelaws have the same meaning as they bear in the empowering statute⁶, and other expressions have their natural meanings⁷.

Byelaws do not operate retrospectively unless it is clearly expressed that they are so to operate⁸.

1 See *Kruse v Johnson* [1898] 2 QB 91 at 99, DC, per Lord Russell of Killowen CJ, who also said that byelaws ought to be supported if possible, and credit ought to be given to those who have to administer them that they will be reasonably administered. In the case of local authority byelaws, unreasonableness must be made out with greater strength and clarity than in the case of byelaws of trading companies etc: *Robert Baird Ltd v Glasgow Corpn* [1936] AC 32, HL. See also *Townsend's (Builders) Ltd v Cinema News and Property Management Ltd*, *David A Wilkie & Partners (third party)* [1959] 1 All ER 7 at 10, [1959] 1 WLR 119 at 122, CA, where Lord Evershed MR quoted with approbation and adopted the dictum of Lord Russell of Killowen CJ in *Kruse v Johnson*.

2 *Walker v Stretton* (1896) 60 JP 313 at 314, DC, per Lord Russell of Killowen CJ. See also *London and North Eastern Rly Co v Berriman* [1946] AC 278 at 313-314, [1946] 1 All ER 255 at 270, HL, per Lord Simonds; *Tuck & Sons v Priester* (1887) 19 QBD 629 at 638, CA, per Lord Esher MR; *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 677, [1960] 3 All ER 503 at 517, HL, obiter, per Lord Denning. See further PARA 563.

3 See *R v Saddlers' Co* (1863) 10 HL Cas 404 at 463 per Lord Wensleydale (quoted with approbation in *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 677, [1960] 3 All ER 503 at 517, HL, per Lord Denning); *Vintners' Co v Passey* (1757) 1 Burr 235 at 239 per Lord Mansfield; *Edmonds v Master and Senior Warden of Watermen and Lightermen's Co* (1855) 24 LJMC 124; *Dearden v Townsend* (1865) LR 1 QB 10.

4 See *Irving v Askew* (1870) LR 5 QB 208; *Re Davis, ex p Davis* (1872) 7 Ch App 526. A prosecution for an offence under a byelaw prohibiting noises in a street to the annoyance of inhabitants succeeded on proof that one inhabitant had been annoyed (*Innes v Newman* [1894] 2 QB 292, DC; and see *Booth v Howell* (1899) 53 JP 678, DC), and the prohibition of indecent language to the annoyance of inhabitants and passengers applied to such language used inside a house and heard by policemen outside although there was no evidence of annoyance (*Brabham v Wookey* (1901) 18 TLR 99, DC; but see *Russon v Dutton (No 2)* (1911) 104 LT 601, 9 LGR 558, DC). A byelaw against betting in any place of public resort applied to private ground to which the public resorted for betting: *Kitson v Ashe* [1899] 1 QB 425, DC. See also *Derham v Strickland* (1911) 104 LT 820, 9 LGR 528, DC; *McQuade v Barnes* [1949] 1 All ER 154, (1948) 47 LGR 43, DC.

5 See PARA 560.

6 See the Interpretation Act 1978 ss 11, 21(1), 22(1), Sch 2 para 1; *Blashill v Chambers* (1884) 14 QBD 479, DC; and **STATUTES** vol 44(1) (Reissue) PARA 1522.

7 See eg *R v Dickenson* (1857) 7 E & B 831; *Harper v Michell* (1879) 44 JP 378, DC.

8 *Hubbard v Bromley RDC* (1905) 69 JP 437, 3 LGR 1377, DC.

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Construction and Enforcement of Byelaws/568. Evidence of byelaws.

568. Evidence of byelaws.

The production of a printed copy of a byelaw purporting to be made by a local authority¹, the Greater London Authority, or an Integrated Transport Authority for an integrated transport area in England upon which is indorsed a certificate purporting to be signed by the proper officer² of the authority³ is prima facie evidence of the facts stated in the certificate, without proof of the handwriting or official position of the person purporting to sign the certificate⁴. The certificate must state: (1) that the byelaw was made by the authority⁵; (2) that the copy is a true copy⁶; (3) that on a specified date the byelaw was confirmed by the authority named in the certificate or, as the case may require, was sent to the Secretary of State or, as the case may be, the Welsh Ministers⁷, and has not been disallowed⁸; and (4) the date, if any, fixed by the confirming authority⁹ for the coming into operation of the byelaw¹⁰.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the proper officer see PARA 431.

3 The production of the certified copy is also prima facie evidence that all conditions precedent to the making and confirmation of the byelaw, such as the publication of notices, have been complied with: *Robinson v Gregory* [1905] 1 KB 534, 3 LGR 308, DC. As to the procedures for making byelaws see PARAS 556, 558; and as to the confirmation of byelaws see PARA 557.

4 Local Government Act 1972 s 238 (amended by the Local Government Act 1985 s 84, Sch 14 para 31(2); the Education Reform Act 1988 s 237(1), Sch 12 para 46; the Local Transport Act 2008 s 77(5), Sch 4 Pt 4 para 48(1), (4); and SI 2001/3719). As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

5 Local Government Act 1972 s 238(a).

6 Local Government Act 1972 s 238(b).

7 As to the Secretary of State or the Welsh Ministers see PARAS 96-97.

8 Local Government Act 1972 s 238(c).

9 As to the meaning of 'confirming authority' see PARA 557 note 1.

10 Local Government Act 1972 s 238(d).

UPDATE

568 Evidence of byelaws

NOTE 4--Local Government Act 1972 s 238 further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 36.

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569. Enforcement of byelaws.

Byelaws may be enforced not only by the imposition of fines on offenders¹, but also, in some instances, by the pulling down of offending work, the removal of offenders from the place to which the byelaws relate², and by injunction³. In addition, as from a day to be appointed, a local authority in England may impose fixed penalties for breach of prescribed classes of byelaw⁴. However, the right to prosecute offences against byelaws generally is discussed elsewhere in this work⁵.

1 As to the power to impose fines see PARA 571. As to an employer's liability for breach of a byelaw by his employee see *Collman v Mills* [1897] 1 QB 396, DC; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 59-64. See also *Watkins v Naval Colliery Co (1897) Ltd* [1912] AC 693, HL. A local authority may not usurp the functions of a judicial authority by setting up a committee to investigate complaints and impose fines on offenders: *Re Wiseman, Re Manchester Corp'n Cab Committee* (1886) 3 TLR 12, CA. As to evidence of byelaws see PARA 568. The lawfulness of byelaws may be challenged in criminal proceedings: see *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL.

2 As to removal from public baths and wash-houses see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 984; and as to removal from recreation and pleasure grounds see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 556.

3 See eg *A-G v Ashborne Recreation Ground Co Ltd* [1903] 1 Ch 101, 1 LGR 146 and *Burnley Borough Council v England* (1978) 77 LGR 227. See also **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

4 See Local Government Act 1972 ss 237A-237D; and PARA 570.

5 As to legal proceedings by local authorities see PARA 573. In the absence of statutory restriction any person, whether interested or not, may act as an informant or complainant in respect of offences committed and the imposition of penalties: *Snodgrass v Topping* (1952) 116 JP 332, DC, per Lord Goddard CJ. Proceedings for offences created by or under the Public Health Act 1936 may not be taken by any person other than the party aggrieved or by the local authority concerned unless the written consent of the Attorney General is first obtained: see s 298; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 128. See also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1469; **MAGISTRATES**. Notwithstanding the Public Health Act 1936 s 298, a constable may take proceedings in respect of an offence against a byelaw made by a local authority, or any body that was the predecessor of a local authority, under any enactment without the Attorney General's consent: Local Government (Miscellaneous Provisions) Act 1982 s 12(1); Public Health (Control of Disease) Act 1984 s 64(2) (amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 13(4)). As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARAS 101-105.

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570. Fixed penalty notices for breach of byelaws.

As from a day to be appointed the following provisions have effect¹. The Secretary of State² may, in relation to England, prescribe classes of byelaws breach of which may be punished by payment of a fixed penalty³. The regulations may prescribe classes of byelaws by reference, in particular, to the enactment under which byelaws are made⁴, the subject matter of byelaws⁵, the authority by which byelaws are made⁶, or the authority or person by whom byelaws are confirmed⁷.

Where an authorised officer of an authority⁸ (or an authorised officer of a parish council in its area⁹) has reason to believe that a person has committed an offence against a byelaw to which a fixed penalty notice applies¹⁰ he may give that person a notice offering him the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty¹¹.

Where a person is given such a notice in respect of an offence no proceedings may be instituted for the offence before the end of the period of 14 days following the date of the notice¹², and he may not be convicted of the offence if he pays the fixed penalty before the end of that period¹³. Such a fixed penalty notice is payable to the authority whose officer gave the notice¹⁴. The amount of a fixed penalty payable in pursuance of a notice is the amount specified by the authority which made the byelaw¹⁵, or, if no amount is so specified, £75¹⁶. If an authorised officer proposes to give a person a fixed penalty notice, the officer may require the person to give him his name and address¹⁷.

An authority must have regard to the desirability of using the amounts paid to it in pursuance of fixed penalty notices for the purpose of combating any relevant nuisance¹⁸.

In any proceedings a certificate which purports to be signed on behalf of the chief finance officer of an authority¹⁹, and states that payment of a fixed penalty was or was not received by a date specified in the certificate²⁰ is evidence of the facts stated²¹.

1 The provisions of the Local Government Act 1972 ss 237A-237E are added by the Local Government and Public Involvement in Health Act 2007 ss 130, 132, and come into force on a day to be appointed under the Local Government and Public Involvement in Health Act 2007 s 245(5). At the date on which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 96.

3 See the Local Government Act 1972 s 237A(1), (3) (as prospectively added: see note 1). An authority which makes byelaws of a class prescribed by regulations under s 237A must have regard to any guidance issued by the Secretary of State about fixed penalties, or any related matter: see s 237E(b), (c) (as prospectively added: see note 1). Further provision is also made for the making of regulations under s 237A: see s 237F (as prospectively added: see note 1).

At the date at which this volume states the law no such regulations had been made.

4 Local Government Act 1972 s 237A(2)(a) (as prospectively added: see note 1).

5 Local Government Act 1972 s 237A(2)(b) (as prospectively added: see note 1).

6 Local Government Act 1972 s 237A(2)(c) (as prospectively added: see note 1).

7 Local Government Act 1972 s 237A(2)(d) (as prospectively added: see note 1).

8 'Authorised officer' in relation to an authority means (1) an employee of the authority who is authorised in writing by the authority for the purpose of giving notices under this section; (2) any person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform the function; and (3) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices: Local Government Act 1972 s 237A(11) (as prospectively added: see note 1). As to the meaning of 'local authority' see PARA 23.

9 As to parish councils see PARA 27 et seq.

10 I.e. a byelaw to which the Local Government Act 1972 s 237A applies.

11 Local Government Act 1972 s 237A(3) (as prospectively added: see note 1). The form of the notice may be specified in regulations made pursuant to s 237A(1): s 237A(10) (as prospectively added: see note 1). A notice must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence: s 237A(6) (as so prospectively added). Such a notice must also state: (1) the period during which proceedings will not be taken for the offence; (2) the amount of the fixed penalty; and (3) the person to whom and the address at which the fixed penalty may be paid: s 237A(7) (as so prospectively added).

12 Local Government Act 1972 s 237A(5)(a) (as prospectively added: see note 1).

13 Local Government Act 1972 s 237A(5)(b) (as prospectively added: see note 1).

14 Local Government Act 1972 s 237A(4) (as prospectively added: see note 1). Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (7)(c) at the

address so mentioned: s 237A(8) (as so prospectively added). Where such a letter is sent payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post: s 237A(9) (as so prospectively added).

15 Local Government Act 1972 s 237B(1)(a) (as prospectively added: see note 1). An authority may specify different amounts in relation to different byelaws: s 237B(2) (as so prospectively added). The Secretary of State may by regulations make provision in connection with the powers under s 237B(1)(a) and (2) (s 237B(3): as so prospectively added). Such regulations may, in particular: (1) require an amount specified to fall within a range prescribed in the regulations; and (2) restrict the extent to which, and the circumstances in which, an authority can make provision under s 237B(2) (s 237B(4): as so prospectively added). Further provision is also made for the making of regulations under s 237B: see s 237F (as so prospectively added). At the date at which this volume states the law no such regulations had been made.

16 Local Government Act 1972 s 237B(1)(b) (as prospectively added: see note 1). The Secretary of State may by order substitute a different amount for the amount for the time being specified: s 237B(5) (as so prospectively added). Further provision is also made for the making of orders under s 237B: see s 237F (as so prospectively added). At the date at which this volume states the law no such orders had been made.

17 Local Government Act 1972 s 237C(1) (as prospectively added: see note 1). A person commits an offence if he fails to give his name and address when required to do so under s 237C(1), or he gives a false or inaccurate name or address in response to such a requirement: s 237C(2) (as so prospectively added). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 237C(3) (as so prospectively added). As to the standard scale see PARA 105 note 7.

18 See the Local Government Act 1972 s 237D(1), (2) (as prospectively added: see note 1). A 'relevant nuisance' is a nuisance in the authority's area for the prevention of which any byelaw to which s 237A applies was made: s 237D(3) (as so prospectively added).

19 Local Government Act 1972 s 237A(11)(a) (as prospectively added: see note 1). For these purposes 'Chief finance officer' means the person having responsibility for the financial affairs of the authority: s 237A(12) (as so prospectively added).

20 Local Government Act 1972 s 237A(11)(b) (as prospectively added: see note 1).

21 Local Government Act 1972 s 237A(11) (as prospectively added: see note 1).

UPDATE

570 Fixed penalty notices for breach of byelaws

TEXT AND NOTE 1--Day appointed is 27 January 2010: SI 2010/112.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(5) BYELAWS AND LOCAL LEGISLATION/(iv) Construction and Enforcement of Byelaws/571. Fines for offences against byelaws.

571. Fines for offences against byelaws.

Byelaws made by local authorities, except in the case of those for which specific provision as to offences and penalties is otherwise made¹, may provide that persons contravening the byelaws are to be liable on summary conviction to a fine not exceeding such sum as may be fixed by the enactment conferring the power to make the byelaws².

In the case of a continuing offence, the offender is liable to a further fine not exceeding the sum fixed by the conferring enactment³.

1 The Local Government Act 1972 s 237 contains the general provision for penalties for offences against local authority byelaws and is expressed to apply to all byelaws to which s 236 (see PARAS 556-557) applies. Section 236 applies to all local authority byelaws for which specific provision is not otherwise made: see s

236(1); and PARA 556. Thus procedural and penalty provisions of a specific character in the enabling byelaw legislation apply to the exclusion of s 236 and s 237. As from a day to be appointed s 237 is amended by the Local Government and Public Involvement in Health Act 2007 s 129(1) so that it applies to byelaws of a class prescribed by regulations under the Local Government Act 1972 s 236A: see PARA 558. At the date at which this volume states the law no such day had been appointed.

2 Local Government Act 1972 s 237. If no such sum is fixed the fine must not exceed level 2 on the standard scale in the case of byelaws made under any public general Act and must not exceed level 1 on the standard scale in any other case: s 237 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 105 note 7.

3 Local Government Act 1972 s 237. If no sum is so fixed, the fine is to consist of a sum not exceeding £5 for each day during which the offence continues after conviction: s 237.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(5) BYELAWS AND LOCAL LEGISLATION/(v) Local Legislation/572. Promotion of or opposition to Bills.

(v) Local Legislation

572. Promotion of or opposition to Bills.

Subject to certain conditions and exceptions¹, where a local authority², other than a parish or community council³, is satisfied that it is expedient to promote, or any local authority is satisfied that it is expedient to oppose, any local or personal Bill in Parliament, it may promote or oppose the Bill accordingly, and may defray the expenses incurred in relation to it⁴.

A resolution to promote or oppose a Bill must be passed by a majority of the whole number of the members of the authority at a meeting of it held after the requisite notice⁵ of the meeting and of its purpose has been given by advertisement in one or more local newspapers circulating in the authority's area (or, in the Isles of Scilly, by public notice in every parish⁶), such notice being in addition to the ordinary notice required for convening a meeting of the authority⁷.

On the promotion of a Bill⁸, a further meeting of the authority to confirm the initial resolution, convened in accordance with the requirements for the initial meeting as described above, must be held as soon as possible after the expiration of 14 days from the deposit of the Bill in Parliament⁹; and, if the resolution to promote the Bill is not confirmed by a majority of the whole number of the members of the authority at the meeting, the authority must take all necessary steps to withdraw the Bill¹⁰.

No payment may be made by a local authority to any member of the authority for acting as counsel or agent in promoting or opposing a Bill¹¹.

1 The powers to promote or oppose Bills are subject to the specific procedure provided by the Local Government Act 1972 s 239: see s 239(1). In addition to this procedure, parliamentary standing orders must be complied with: see **PARLIAMENT** vol 34 (Reissue) PARA 864 et seq. No local authority has power to promote or oppose a Bill for forming or abolishing any local government area or for altering, or altering the status or electoral arrangements of, any such area: see s 70; and PARA 91. As to the meaning of 'local government area' see PARA 22. As to the meaning of 'electoral arrangements' see PARA 84 note 3.

Local Acts in force prior to the reorganisation of local government on 1 April 1974 are subject to a number of provisions for their continuance, modification, extension or repeal in accordance with s 262: see PARA 14.

2 The powers conferred on a local authority by the Local Government Act 1972 s 239(1) (see the text to note 4) are also exercisable by a joint authority and a joint waste authority: s 239(4A) (added by the Local Government Act 1985 s 84, Sch 14 para 32; amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt 1; and the Local Government and Public Involvement in Health Act 2007 209(2), Sch 13 Pt 1 paras 1, 23). As to the

meaning of 'local authority' see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51.

3 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

4 Local Government Act 1972 s 239(1). This general power is in substitution for any power conferred on the local authority by a local Act: s 239(4). A local Bill promoted in Parliament by the council of a metropolitan district may include provisions requested by the council of another metropolitan district in the same county: Local Government Act 1985 s 87(1). This provision only applies if the requesting council passes a resolution approving the provisions in question and that resolution is passed in a specified manner: see s 87(2).

5 le 30 clear days' notice in the case of the promotion of a Bill, and ten clear days' notice in the case of opposition to a Bill: Local Government Act 1972 s 239(3).

6 As to the Council of the Isles of Scilly see PARA 36.

7 See the Local Government Act 1972 s 239(2)(a); and the Isles of Scilly Order 1978, SI 1978/1844, art 6(4), Schedule. As to ordinary notice see PARA 627.

8 This does not apply in the case of opposition to a Bill.

9 As to the rules for the deposit of Bills in Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 728 et seq.

10 See the Local Government Act 1972 s 239(2)(b).

11 Local Government Act 1972 s 239(5) (amended by the Local Government Act 1985 Sch 14 para 32).

UPDATE

572 Promotion of or opposition to Bills

NOTE 2--Local Government Act 1972 s 239(4A) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 37.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/ (6) LEGAL PROCEEDINGS AND NOTICES/573. Legal proceedings by and against local authorities.

(6) LEGAL PROCEEDINGS AND NOTICES

573. Legal proceedings by and against local authorities.

Where a local authority¹ considers it expedient for the promotion or protection of the interests of the inhabitants of its area², it may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in its own name³ and may, in its own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any minister or public body under any enactment⁴.

Any member⁵ or officer⁶ of a local authority⁷ who is authorised by that authority to prosecute or defend on its behalf, or to appear on its behalf, in proceedings before a magistrates' court is entitled to prosecute or defend or to appear in any such proceedings and to conduct them even though not a solicitor holding a current practising certificate⁸. Authorisation must be given before proceedings are issued⁹, and that authority must have been properly given¹⁰. A member or officer need not prove that he is authorised to prosecute, defend or appear on behalf of a local authority unless challenged to do so¹¹. Where proof is required it may be provided by production of a minute of the resolution granting authorisation¹².

1 For these purposes, 'local authority' includes the Common Council of the City of London and the London Fire and Emergency Planning Authority: Local Government Act 1972 s 222(2) (amended by the Greater London Authority Act 1999 s 328(8), Sch 29 para 20). References to a local authority in this context also include an authority established under the Local Government Act 1985 s 10 (see PARA 17): Local Government Reorganisation (Miscellaneous Provisions) Order 1990, SI 1990/1765, art 4(3) (amended by SI 2000/1553). As to the meaning of 'local authority' generally see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**.

2 For decisions as to the exercise of similar discretionary powers by local authorities in relation to byelaws see PARAS 553-571. See also PARA 461.

3 Local Government Act 1972 s 222(1)(a). Where a court grants an injunction, requested by a local authority under s 222, which prohibits conduct capable of causing nuisance or annoyance to a person it may attach a power of arrest to any provision of the injunction: see the Police and Justice Act 2006 s 27, Sch 10; and **STATUTES**.

See *Westminster City Council v Jones* (1981) 80 LGR 241, (1981) Times, 12 June (injunction to enforce stop notice); *Stoke-on-Trent City Council v B and Q (Retail) Ltd* [1984] AC 754, [1984] 2 All ER 332, HL (injunction to prevent breach of Sunday trading laws), followed in *City of London Corp v Bovis Construction Ltd* [1992] 3 All ER 697, (1988) 86 LGR 660, CA (injunction to restrain contraventions of notice under the Control of Pollution Act 1974 which were causing noise nuisance); *Bedfordshire County Council v Central Electricity Generating Board* [1985] JPL 43, CA (injunction refused for prevention of potential breach of planning control); *Runnymede Borough Council v Ball* [1986] 1 All ER 629, [1986] 1 WLR 353, CA; *Waverley Borough Council v Hilden* [1988] 1 All ER 807, [1988] 1 WLR 246 (injunction to restrain use of land as gipsy caravan site in breach of planning control); *Westminster City Council v Freeman* [1986] BTLC 435, CA (injunction to restrain unlawful street trading); *Staffordshire Moorlands District Council v Cartwright* (1992) 63 P & CR 285, CA (declaration as to planning status of an estate); *R v Jarrett, R v Steward* [1997] Crim LR 517, CA (prosecution of offences under the trade descriptions legislation); *Middlesbrough Borough Council v Safeer* [2001] EWHC Admin 525, [2001] 4 All ER 630, DC (prosecution by authority for driving without insurance contrary to Road Traffic Act 1988 s 143 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 937)); *Nottingham County Council v Zain* [2001] EWCA Civ 1248, [2002] 1 WLR 607, [2003] HLR 181 (local authority entitled to seek injunction in own name to prevent alleged drug dealer from entering housing estate); *Kensington and Chelsea Royal London Borough Council v Harvey Nichols & Co Ltd* [2001] EWCA Civ 702, [2002] 1 P & CR 378, [2001] 3 PLR 71 (mandatory injunction to stop advertising which breached planning regulations); *Worcestershire County Council v Tongue* [2004] EWCA Civ 140, [2004] Ch 236, [2004] 2 WLR 1193 (civil courts had no jurisdiction to grant injunction allowing local authority to enter defendants' land to remove their animals); *Guildford Borough Council v Hein* [2005] EWCA Civ 979, [2005] LGR 797 (local authority entitled to injunction to prevent harm to dogs); and *Birmingham City Council v Shafi* [2008] EWCA Civ 1186, 152 Sol Jo (no 43) 31, [2008] All ER (D) 304 (Oct) (injunction sought in aid of criminal law and public nuisance). The Local Authority Act 1972 s 222 does not prevent a local authority from bringing criminal proceedings in its own name: *Monks v East Northamptonshire District Council* [2002] EWHC 473 (Admin), (2002) Times, 15 March. The proper method for challenging a decision to institute proceedings is by way of judicial review: *Avon County Council v Buscott* [1988] QB 656, [1988] 1 All ER 841, CA, applying *Waverley Borough Council v Hilden*. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

See further *Solihull Metropolitan Borough Council v Maxfern Ltd* [1977] 2 All ER 177, [1977] 1 WLR 127 (where an injunction was granted to a local authority restraining the use of certain land as a retail market on Sundays); *Stafford Borough Council v Elkenford Ltd* [1977] 2 All ER 519 at 526, [1977] 1 WLR 324 at 327, CA, per Lord Denning MR (where an injunction was granted restraining a Sunday market after a conviction for trading contrary to the Shops Act 1950 s 47 (now repealed)); *Kent County Council v Batchelor* [1978] 3 All ER 980 at 986 per Talbot J (where it was held that a local authority could seek an injunction to prevent breaches of a tree preservation order); *Hammersmith London Borough Council v Magnum Automated Forecourts Ltd* [1978] 1 All ER 401 at 406, [1978] 1 WLR 50 at 56, CA, per Roskill LJ (where, in proceedings under the Control of Pollution Act 1974 s 58 (now repealed), the local authority was held to be entitled to seek an injunction in the High Court as an additional, not an alternative, right without waiting for a final decision on an appeal to magistrates). For a reference (obiter) to the position of local authorities in this field of enforcement of law see *Gouriet v Union of Post Office Workers* [1978] AC 435 at 494, [1977] 3 All ER 70 at 94, HL, per Viscount Dilhorne. See also *Mote v Secretary for Work and Pensions* [2007] EWCA Civ 1324, [2008] HLR 427 (where a civil action to recover overpaid benefits could proceed in advance of a prosecution based on the same facts notwithstanding the introduction of the Human Rights Act 1998).

4 Local Government Act 1972 s 222(1)(b). As to a local authority's duty in relation to a vulnerable person under threat in its area see *Re Z (Local Authority: Duty)* [2004] EWHC 2817 (Fam), [2005] 3 All ER 280, [2005] 1 WLR 959.

5 'Member' is not defined. It appears to mean the elected councillors, and does not appear to include co-opted members of committees. As to members see PARA 117 et seq.

6 As to officers see PARA 425 et seq.

7 For these purposes, 'local authority' includes the Common Council of the City of London, a joint authority, a joint waste authority, the Greater London Authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), and the Metropolitan Police Authority: Local Government Act 1972 s 223(2) (amended by the Local Government Act 1985 s 84, Sch 14 para 21; the Education Reform Act 1988 s 237, Sch 13; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 12; the Environment Act 1995 s 120, Sch 22 para 17(a), (b), Sch 24; the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 ss 88, 134(2), Sch 6 para 7, Sch 10; the Greater London Authority Act 1999 s 325, Sch 27 para 29; the Criminal Justice and Police Act 2001 Sch 6 para 29, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 13; and by SI 2001/3719). As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to authorities in London see **LONDON GOVERNMENT**. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq. The Local Government Act 1972 ss 222-224A have effect as if any reference to a joint authority included a reference to the London Fire and Emergency Planning Authority: s 224A (added by the Greater London Authority Act 1999 Sch 29, para 21).

8 Local Government Act 1972 s 223(1). This provision applies notwithstanding anything in the Solicitors Act 1974: Local Government Act 1972 s 223(1) (amended by the Solicitors Act 1974 s 89(1), Sch 3 para 9). As to the requirements for practising certificates see the Solicitors Act 1974 ss 9-18; and **LEGAL PROFESSIONS** vol 65 (2008) PARA 667 et seq. As from a day to be appointed the Local Government Act 1972 s 223(1) is amended by the Legal Services Act 2007 s 208(1), Sch 21 para 28, to remove any references to solicitors and the Solicitors Act 1974 and allow local authorities to conduct any such proceedings. At the date at which this volume states the law no such day had been appointed.

The Local Government Act 1972 s 223 may have effect by order as if any person, or any employee of such a person, authorised by order to exercise a function of a local authority, were an officer of that authority: see the Deregulation and Contracting Out Act 1994 Sch 16 para 3. As to contracting out see PARA 407 et seq. See also the Local Authorities (Contracting Out of BID Levy Billing, Collection and Enforcement Functions) Order 2005, SI 2005/215, art 21; and the Local Authorities (Contracting Out of Anti-social Behaviour Order Functions) (England) Order 2007, SI 2007/1441, art 1(2), (4).

9 See *Bowyer, Philpott and Payne Ltd v Mather* [1919] 1 KB 419, 17 LGR 222.

10 See *Bob Keats Ltd v Farrant* [1951] 1 All ER 899, 49 LGR 631 (where proceedings issued by the clerk to the authority were void as there had been no formal appointment of the clerk); and *R v Norwich Justices, ex p Texas Homecare Ltd* [1991] Crim LR 555, [1991] COD 318 (where an information laid by a Senior Environmental Health Officer who had not been authorised to prosecute on behalf of the local authority was held to be void).

11 See *Ross v Helm* [1913] 3 KB 462, 11 LGR 36.

12 Local Government Act 1972 Sch 12 Pt 6 para 41(1); and PARA 625. See also *Dee and Clwyd River Authority v Parry* (1967) 65 LGR 488; and *James v Stein* (1946) 44 LGR 209, 110 JP 279 (powers of the authorised member or officer while conducting proceedings).

UPDATE

573 Legal proceedings by and against local authorities

NOTE 3--See also *R (on the application of Donnachie) v Cardiff Magistrates' Court* [2009] EWHC 489 (Admin), [2009] LLR 523, [2009] All ER (D) 158 (Mar) (prosecution under trade descriptions legislation).

NOTE 7--Definition of 'local authority' in Local Government Act 1972 s 223(2) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 24.

NOTE 8--Day appointed is 1 January 2010: SI 2009/3250.

574. Authentication of documents.

Any notice, order or other document which a local authority¹ is authorised or required by or under any enactment² to give, make or issue may be signed on behalf of the authority by its proper officer³.

Any document purporting to bear the signature⁴ of the proper officer of the authority is deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority⁵.

These provisions⁶ do not apply to a document or class of documents where any enactment or instrument made under an enactment makes, in relation to that document or class of documents, provision with respect to the matters dealt with by these provisions⁷.

1 For these purposes, 'local authority' includes a joint authority, a joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), and the Metropolitan Police Authority: Local Government Act 1972 s 234(4) (added by the Local Government Act 1985 s 84, Sch 14 para 30; and amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 14(e); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 9(e); the Greater London Authority Act 1999 s 325, Sch 27 para 35; the Criminal Justice and Police Act 2001 Sch 6 para 29, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 22). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq.

2 As to the meaning of 'enactment' see PARA 12 note 1.

3 Local Government Act 1972 s 234(1). As to the proper officer see PARA 431.

4 'Signature' includes a facsimile of a signature by whatever process reproduced: Local Government Act 1972 s 234(2). See also *Plymouth Corp v Hurrell* [1968] 1 QB 455, [1967] 3 All ER 354, CA; *Greater London Council v Connolly* [1970] 2 QB 100, [1970] 1 All ER 870, CA.

5 Local Government Act 1972 s 234(2). For the provisions by which duly certified resolutions, orders, reports or minutes of proceedings become evidence see PARA 575.

6 Ie the Local Government Act 1972 s 234(1) or s 234(2): see the text and notes 1-5.

7 See the Local Government Act 1972 s 234(3). Specific provision is made as to the signing by the responsible financial officer of the balance sheet, etc: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 632.

UPDATE

574 Authentication of documents

NOTE 1--Definition of 'local authority' in Local Government Act 1972 s 234(4) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 33.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/ (6) LEGAL PROCEEDINGS AND NOTICES/575. Evidence of resolutions, orders, reports or minutes.

575. Evidence of resolutions, orders, reports or minutes.

A document which: (1) purports to be a copy of a resolution, order or report of a local authority¹ or a precursor² of a local authority³, or the minutes of the proceedings at a meeting of a local authority or a precursor of a local authority⁴; and (2) bears a certificate, purporting to be signed by the proper officer⁵ of the authority or a person authorised in that behalf by him or the authority, stating that the resolution was passed or the order or report was made by the local authority or precursor on a specified date or, as the case may be, that the minutes were duly⁶ signed⁷, is evidence in any proceedings of the matters stated in the certificate and of the terms of the resolution, order, report or minutes in question⁸.

A document which: (a) purports to be a copy of an instrument by which the proper officer of an authority appointed a person to be an officer of the authority or authorised a person to perform functions specified in the instrument⁹; and (b) bears a certificate, purporting to be signed as in head (2) above, stating that the document is a copy of the instrument in question¹⁰, is evidence in any proceedings of the fact that the instrument was made by that proper officer and of the terms of the instrument¹¹.

In the case of a local authority which is operating executive arrangements¹², a document which (i) purports to be a copy of a record of any decision made by the executive of that authority, or a member of that executive or any person acting on behalf of that executive, where that record is required to be kept or produced¹³; and (ii) bears a certificate purporting to be signed by the proper officer of the authority or by a person authorised in that behalf by him or any other person who is authorised or required to produce such a record¹⁴, stating that the decision was made on the date specified in the certificate by that executive, or as the case may be, by the member of that executive or by the person acting on behalf of that executive¹⁵, is evidence in any proceedings of the matters stated in the certificate and of the terms of the decision in question¹⁶.

If a document which purports to be a copy of a relevant record¹⁷ bears a certificate purporting to be signed by¹⁸ the proper officer of the local authority¹⁹, or a person authorised in that behalf by that officer or by the local authority²⁰, and stating that the decision was made or the action was taken by the member of the local authority on the date specified in the certificate²¹, that document is evidence in any proceedings of the matters stated in the certificate and of the terms of the decision, or nature of the action, in question²².

1 For the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 41(1) (except the first and second references in head (2) in the text), 'local authority' includes a committee of a local authority and a sub-committee of such a committee: s 41(2). As to the meaning of 'local authority' generally see PARA 23.

2 'Precursor', in relation to a local authority, means any authority which has ceased to exist, but which when it existed was constituted in pursuance of the enactments relating to local government which were then in force, for an area any part of which is included in the area of the local authority: Local Government (Miscellaneous Provisions) Act 1976 s 41(4). It includes a committee of such a precursor and a sub-committee of such a committee: s 41(2).

3 Local Government (Miscellaneous Provisions) Act 1976 s 41(1)(a)(i).

4 Local Government (Miscellaneous Provisions) Act 1976 s 41(1)(a)(ii).

5 As to the proper officer see PARA 431. As to the authentication of local authority notices, orders or other documents by the proper officer see PARA 574. The reference in the text to certification by the proper or other authorised officer is a reference to such officer appointed or authorised by the authority itself and not by a committee or sub-committee: see the wording of Local Government (Miscellaneous Provisions) Act 1976 s 41(2).

6 If signed in accordance with the Local Government Act 1972 s 99, Sch 12 para 41 (see PARA 625), or (if signed before 1 April 1974) the corresponding provision of the local government enactments which were in force when the minutes were signed: see the Local Government (Miscellaneous Provisions) Act 1976 s 41(1)(b).

7 Local Government (Miscellaneous Provisions) Act 1976 s 41(1)(b).

8 Local Government (Miscellaneous Provisions) Act 1976 s 41(1).

- 9 Local Government (Miscellaneous Provisions) Act 1976 s 41(3)(a).
- 10 Local Government (Miscellaneous Provisions) Act 1976 s 41(3)(b).
- 11 Local Government (Miscellaneous Provisions) Act 1976 s 41(3).
- 12 As to executive arrangements see PARA 303 et seq.
- 13 Local Government (Miscellaneous Provisions) Act 1976 s 41(2A)(a) (s 41(2A)-(2C) added by SI 2001/2237; and SI 2002/808; s 41(2A)(a) amended by the Local Government and Public Involvement in Health Act 2007 s 237(3)(a)). The record referred to is one required by the Local Government Act 2000 s 22, or by any regulations made under that section: see PARA 644.
- 14 Is authorised or required by virtue of regulations made under the Local Government Act 2000 s 22: see PARA 644.
- 15 Local Government (Miscellaneous Provisions) Act 1976 s 41(2A)(b) (as added (see note 13); and amended by the Local Government and Public Involvement in Health Act 2007 s 237(3)(b)).
- 16 Local Government (Miscellaneous Provisions) Act 1976 s 41(2A) (as added: see note 13).
- 17 The Local Government (Miscellaneous Provisions) Act 1976 s 41(2C) applies to a record if: (1) it records a decision made or action taken by a member of a local authority or of a precursor of a local authority in exercise of a function of the authority or precursor by virtue of arrangements made under the Local Government and Public Involvement in Health Act 2007 s 236 (see PARA 378); and (2) it is required to be made by regulations under the Local Government Act 1972 s 100EA (see PARA 666): Local Government (Miscellaneous Provisions) Act 1976 s 41(2B) (as added: see note 13).
- 18 Local Government (Miscellaneous Provisions) Act 1976 s 41(2C)(a) (as added: see note 13).
- 19 Local Government (Miscellaneous Provisions) Act 1976 s 41(2C)(a)(i) (as added: see note 13).
- 20 Local Government (Miscellaneous Provisions) Act 1976 s 41(2C)(a)(ii) (as added: see note 13).
- 21 Local Government (Miscellaneous Provisions) Act 1976 s 41(2C)(b) (as added: see note 13).
- 18 Local Government (Miscellaneous Provisions) Act 1976 s 41(2C) (as added: see note 13).

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POWERS AND DUTIES OF LOCAL AUTHORITIES/ (6) LEGAL PROCEEDINGS AND NOTICES/576.
Service of notices by local authorities.

576. Service of notices by local authorities.

Except in the case of documents which are to be given or served in any proceedings in court¹, any notice, order or other document required or authorised by or under any enactment² to be given to or served on any person by or on behalf of a local authority³ or by one of its officers⁴ may be given to or served on the person in question either by delivering it to him or by leaving it at his proper address⁵, or by sending it by post to him at that address⁶. In the case of a body corporate, the document may be given to or served on its secretary or clerk⁷; and, in the case of a partnership, the document may be given to or served on a partner or a person having the control or management of the partnership business⁸.

If the name or address of any owner, lessee or occupier of land⁹ to or on whom any notice or other document mentioned above is to be given or served cannot after reasonable inquiry be ascertained¹⁰, the document may be given or served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land¹¹.

1 Local Government Act 1972 s 233(9). Service of such documents in court proceedings is regulated by rules of court and other procedural rules: see **COURTS; CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2007 Reissue) PARA 913; **MAGISTRATES; CIVIL PROCEDURE**.

2 As to the meaning of 'enactment' see PARA 12 note 1.

3 For these purposes, 'local authority' includes a joint authority, a joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), and the Metropolitan Police Authority: Local Government Act 1972 s 233(11) (added by the Local Government Act 1985 s 84, Sch 14 para 29; and amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 14(d); the Police Act 1996 s 103(1), Sch 7 para 1(1), (2)(h); the Police Act 1997 s 88, Sch 6 para 9(d); the Greater London Authority Act 1999 s 325, Sch 27 para 34; the Criminal Justice and Police Act 2001 Sch 6 para 29, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 21). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq.

These provisions for the service of local authority documents also apply to documents required or authorised to be served or given by or on behalf of the chairman of a parish meeting: Local Government Act 1972 s 233(8). As to parish meetings see PARA 34.

4 Local Government Act 1972 s 233(1). As to officers see PARA 425 et seq.

5 For the purposes of the Local Government Act 1972 s 233 (and, in its application to s 233, the Interpretation Act 1978 s 7), the proper address of any person is his last known address (Local Government Act 1972 s 233(4)), except that: (1) in the case of a body corporate or its secretary or clerk, it is the address of that body's registered or principal office (s 233(4)(a)); and (2) in the case of a partnership or a person having the control or management of the partnership business, it is that of the partnership's principal office (s 233(4)(b)). For these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 233(4). See also *Re Follick, ex p Trustee* (1907) 97 LT 645, where a notice was validly served at a proper address even though it was known that the owner had left the address. As to the meaning of 'United Kingdom' see PARA 116 note 18.

If the person to be given or served with any document has specified an address within the United Kingdom other than his proper address as so defined as the one at which he or someone on his behalf will accept documents of the same description as that document, that address is also to be treated for these purposes as his proper address: Local Government Act 1972 s 233(5). Subject to any provision of any enactment or instrument excluding the general provisions of s 233, the methods of giving or serving documents under it are in addition to the methods available under any other enactment or instrument under it: s 233(10). See *R (on the application of Gloucestershire County Council) v Keyway (Gloucester) Ltd* [2003] EWHC 3012 (Admin), [2004] 1 PLR 115 (service effective where stop notice left at principal and registered offices with unidentified persons).

6 Local Government Act 1972 s 233(2). Where an Act passed after 1889 authorises or requires any document to be served by post (whether 'serve', 'give', 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: Interpretation Act 1978 s 7, Sch 2 para 3. Prepayment of the letter must be proved in order to prove service: *Walthamstow UDC v Henwood* [1897] 1 Ch 41. The presumption that a notice has been received when properly addressed, prepaid and posted is not merely a presumption of fact unless the contrary is shown but is a presumption of law, whether in fact the notice was received by the addressee or not: *R v Westminster Unions Assessment Committee, ex p Woodward & Sons* [1917] 1 KB 832, 15 LGR 199, DC (decided under the Valuation (Metropolis) Act 1869 (repealed)).

7 Local Government Act 1972 s 233(3)(a).

8 Local Government Act 1972 s 233(3)(b).

9 As to the meaning of 'land' see PARA 509 note 4.

10 As to ascertaining particulars of persons interested in land see the Local Government (Miscellaneous Provisions) Act 1976 s 16; and PARA 533.

11 Local Government Act 1972 s 233(7).

UPDATE

576 Service of notices by local authorities

NOTE 3--Definition of 'local authority' in Local Government Act 1972 s 233(11) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 32.

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577. Public notices.

Save as otherwise expressly provided¹, a public notice required to be given by a local authority² must be given by posting it in some conspicuous place or places³ within the area of the local authority⁴ and in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice⁵.

1 See eg the Local Government Act 1972 s 99, Sch 12 para 4(2) (notice of meeting of principal council: see PARA 249). As to public notices by returning officers for the purposes of local elections see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARAS 359, 481, 588. As to requirements for the publication of changes of name of local authorities see PARA 26. In many cases a local authority must give public notice by advertisement in local newspapers and the London Gazette: see eg s 236(4) (byelaws: see PARA 556), s 239(2) (promotion of local Bills: see PARA 572), s 240(1) (provisional orders: see PARA 99), s 240(3) (statutory orders subject to special parliamentary procedure: see PARA 100).

2 For these purposes, 'local authority' includes a joint authority, a joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), and the Metropolitan Police Authority: Local Government Act 1972 s 232(1A) (added by the Local Government Act 1985 s 84, Sch 14 para 28; and amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 14(c); the Police Act 1996 s 103(1), Sch 7 para 1(1), (2)(h); the Police Act 1997 s 88, Sch 6 para 9(c); the Greater London Authority Act 1999 s 325, Sch 27 para 33; the Criminal Justice and Police Act 2001 Sch 6 para 29, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 20). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq. These provisions as to public notices apply to a public notice required to be given by the chairman of a parish meeting as they apply to such notice by a parish council: Local Government Act 1972 s 232(2). As to parish councils see PARA 27 et seq.

3 What is a conspicuous place is a question of fact: *West Ham Corpn v Thomas* (1908) 73 JP 65, 6 LGR 1043, DC.

4 Local Government Act 1972 s 232(1)(a).

5 Local Government Act 1972 s 232(1)(b).

UPDATE

577 Public notices

NOTE 2--Definition of 'local authority' in Local Government Act 1972 s 232(1A) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 31.

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578. Service of notices on local authorities.

Except in the case of any document which is to be given or served in any proceedings in court¹, any notice, order or other document required or authorised by any enactment² or any instrument made under an enactment to be given to or served on a local authority³ or the chairman or an officer⁴ of a local authority must be given or served by addressing it to the local authority and leaving it at, or sending it by post to, the authority's principal office or any other office of the authority specified by it as one at which it will accept documents of the same description as that document⁵.

Any notice, order or other document so required or authorised to be given to or served on a parish meeting, or on the chairman of the parish meeting, must be given or served by addressing it to the chairman of the parish meeting and by delivering it to him, or by leaving it at his last known address, or by sending it by post to him at that address⁶.

Except in the case of court proceedings, these methods of giving or serving documents are in substitution for the methods provided for by any other enactment or any instrument made under an enactment so far as it relates to the giving or service of documents to or on a local authority, the chairman or an officer of a local authority or a parish meeting or the chairman of a parish meeting⁷.

1 See the Local Government Act 1972 s 231(3). Service of documents in court proceedings is regulated by rules of court and other procedural rules: see **COURTS; CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 913; **MAGISTRATES; CIVIL PROCEDURE**.

2 As to the meaning of 'enactment' see PARA 12 note 1.

3 For these purposes, 'local authority' includes a joint authority, a joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority: Local Government Act 1972 s 231(4) (added by the Local Government Act 1985 s 84, Sch 14 para 27; and amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4 para 14(b); the Police Act 1996 s 103(1), Sch 7 para 1(1), (2)(h); the Police Act 1997 s 88, Sch 6 para 9(b); the Greater London Authority Act 1999 s 325, Sch 27 para 32; the Criminal Justice and Police Act 2001 Sch 6 para 29, Sch 7 Pt 5(1); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 1 paras 1, 19). As to the meaning of 'local authority' generally see PARA 23. As to joint authorities see PARA 47 et seq. As to joint waste authorities see PARA 51. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARA 147 et seq.

4 As to officers see PARA 425 et seq.

5 Local Government Act 1972 s 231(1).

6 Local Government Act 1972 s 231(2). As to parish meetings and their chairmen see PARAS 34, 145. The notice may be valid even if the addressee has left the address: *Re Follick, ex p Trustee* (1907) 97 LT 645.

7 Local Government Act 1972 s 231(3).

UPDATE

578 Service of notices on local authorities

NOTE 3--Definition of 'local authority' in Local Government Act 1972 s 231(4) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 30.

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(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS

579. Local authority functions in general.

Local authority functions¹ were variously reallocated on the reorganisation of the structure of local government².

Functions of local authorities, and the specific allocation of those functions, are contained in many statutes relating to diverse matters, such as public health³, housing⁴, highways⁵, town planning⁶, road traffic⁷, education⁸, consumer protection⁹ and licensing powers¹⁰, and are dealt with elsewhere in this work. Many other functions can only be identified with certainty by referring to the specific statutes and are not capable of accurate statement in any list or other short summary.

1 For the purposes of the Local Government Act 1929, the London Government Act 1963 and the Local Government (Miscellaneous Provisions) Act 1976 Pt I (ss 1-44), 'functions' includes powers and duties: see the Local Government Act 1929 s 134; the London Government Act 1963 s 89(1); and the Local Government (Miscellaneous Provisions) Act 1976 s 44(1). 'Functions' is not defined in the Local Government Act 1972 or in the Local Government Act 1974. It has been held that the word 'functions' in the Local Government Act 1972 s 111 (see PARA 462) 'embraces all the duties and powers of a local authority; the sum total of the activities Parliament has entrusted to it. Those activities are its functions': *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1 at 29, HL, per Lord Templeman.

2 Under the Local Government Act 1972, the transfer of functions from the old to the new authorities was effected both by general provisions which adapted references in earlier legislation to former types of authorities so as to refer to classes of new authorities and by a large number of specific amendments. For specific amendments see eg s 180, Sch 14 (public health), s 181 (water and sewerage), s 182, Sch 16 (town and country planning), s 184, Sch 17 (national park and countryside functions), s 186 (traffic and transportation functions), s 187 (highways), s 189 (commons), s 197 (fire services), s 202, Sch 24 (public transport), ss 206, 208 (public libraries and museums), s 211 (Welsh church funds), ss 214, 215, Sch 26 (cemeteries, crematoria, churchyards).

General adaptations are made to the provisions of public general Acts passed before or during the same session as the Local Government Act 1972, and to instruments made before the passing of that Act under public general Acts, being instruments of a legislative character and not being instruments in the nature of local enactments: see s 179(1). In any such provision any reference to an administrative county or its council, or any reference which is to be construed as such a reference, except where it is a reference to a specified county or council or is to be construed as such, must be construed as a reference to a new county or its council, as the case may be: s 179(2). Similarly any reference in any such provision to an urban district, whether as such or as a district or county district, or to the council of such a district, except where it is a reference to a specified district or council or is to be construed as such, must be construed as a reference to a new district or its council, as the case may be: s 179(3). As to the meanings of 'county' and 'district' see PARA 24 note 5. As to the meaning of 'new' see PARA 10 note 7. As to the abolition of administrative counties and urban districts outside Greater London (see PARA 35) and the Isles of Scilly (see PARA 36) see s 1(10); and PARA 5. The term 'county district' was used to describe non-county boroughs, urban districts and rural districts in the pre-1974 reorganisation framework, but was not continued for any purpose in the Local Government Act 1972. Any reference to a rural parish (whether as such or as a parish) or the council or meeting of such a parish, or any reference to be so construed as such a reference, except where it is a reference to a specified parish or its council or meeting, must be construed as respects England as a reference to a parish or, as the case may be, its council or meeting, and as respects Wales as a reference to a community or, as the case may be, its council (if any): s 179(4). As to the continuance of rural parishes as parishes see PARA 27. As to parishes see PARA 27 et seq; and as to communities see PARA 41 et seq. See also the general power to adapt Acts and instruments (see s 252; and PARA 13) and the power to make consequential and supplementary provision (see s 254; and PARA 6). As to the adaptation of local provisions see s 262; and PARA 14.

The functions of the former metropolitan county councils and the Greater London Council were reallocated consequent upon the abolition of those councils by the Local Government Act 1985: see PARA 17.

Further reallocation has been effected by the establishment of single tier county councils or district councils in certain areas of England by orders under the Local Government Act 1992 and the Local Government and Public Involvement in Health Act 2007: see PARA 55 et seq.

In Wales functions were reallocated on the reorganisation of the structure of local government by the Local Government (Wales) Act 1994, which replaced all the counties and districts in Wales established by the Local Government Act 1972 with single tier counties and county boroughs: see PARAS 18, 37 et seq. The Local Government (Wales) Act 1994 makes provision for the purpose of adapting relevant legislative provisions and in particular for the purpose of providing for the exercise of functions conferred by such provisions: see s 17(1). Section 17 has effect subject to any provision made by, or by any instrument under, the Local Government (Wales) Act 1994 and is not to be taken as affecting any provision so made: s 17(3). A provision is a 'relevant legislative provision' for these purposes if it is a provision of: (1) any public general Act passed before, or during the same session as, the Local Government (Wales) Act 1994; or (2) an instrument which was made before the passing of the Local Government (Wales) Act 1994, under a public general Act, and which is of a legislative character but is not in the nature of a local enactment: s 17(2). In any relevant legislative provision: (a) any reference to an area which is the area of a county council or the area of a district council, and any reference which is to be construed as a reference to such an area, must be construed, in relation to Wales, as a reference to a new principal area (see s 17(4)); and (b) any reference to the council of a county or district, and any reference which is to be construed as such, must be construed, in relation to Wales, as a reference to the council of a new principal area (see s 17(5)). Where any relevant legislative provision is to be construed in accordance with s 17(4) or s 17(5), it must be so construed subject to any modifications necessary to give full effect to the provision, and the Welsh Ministers may by order make such amendments or other modifications of the provision as he considers necessary or expedient in consequence of any provision made by or under the Local Government (Wales) Act 1994: s 17(7). Where, in relation to any relevant legislative provision, any question arises as to which new principal area is the appropriate new principal area for the purposes of that provision, that question must be determined by order made by the Welsh Ministers: s 17(6). At the date at which this volume states the law no orders had been made under s 17. As to the Welsh Ministers see PARA 97. Functions of a local authority under the Local Government Act 1972 Pts 9, 11, the Local Government Act 1985 Pt 2, the Local Government Act 1988 Pt 4, the Local Government (Miscellaneous Provisions) Act 1976 and the Local Government (Miscellaneous Provisions) Act 1982 are, in circumstances set out in the Regulatory Enforcement and Sanctions Act 2008 s 4, regulated by the Local Better Regulation Office: see ss 4-8; and PARA 733 et seq.

- 3 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**; and PARA 584.
- 4 See **HOUSING**; and PARA 591.
- 5 See **HIGHWAYS, STREETS AND BRIDGES**; and PARA 592.
- 6 See **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.
- 7 See **ROAD TRAFFIC**.
- 8 See **EDUCATION**; and PARA 590.
- 9 See **SALE OF GOODS AND SUPPLY OF SERVICES**.
- 10 See eg **LICENSING AND GAMBLING**.

UPDATE

579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

579 Local authority functions in general

As to the duty of specified public authorities to secure involvement in the exercise of their functions, see PARA 579A.

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579A. Duty of public authorities to secure involvement.

Where an authority¹ considers it appropriate for representatives² of interested persons³, or of interested persons of a particular description, to be involved in the exercise of any of its relevant functions⁴ by being provided with information about the exercise of the function, consulted about the exercise of the function, or involved in another way, it must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way⁵. The Secretary of State may give guidance⁶ to authorities in relation to the discharge of their duties⁷. Such guidance may be given generally or to one or more particular authorities, may be different for different authorities, and must be published⁸.

1 The affected authorities are: the Arts Council of England; the English Sports Council; the Environment Agency; the Health and Safety Executive; the Historic Buildings and Monuments Commission for England; the Homes and Communities Agency; the Museums, Libraries and Archives Council; Natural England; a regional development agency; a police authority in England; a chief officer of police for a police force in England; a local probation board for an area in England or a probation trust (other than a probation trust as defined by the Offender Management Act 2007 Sch 1 para 13(6)); a youth offending team for an area in England; and the Secretary of State: Local Democracy, Economic Development and Construction Act 2009 s 23(2).

2 'Representative' means, in relation to interested persons (see NOTE 3) or a description of interested person, a person who appears to an authority to be representative of the interested persons: Local Democracy, Economic Development and Construction Act 2009 s 23(7).

3 'Interested person' means, in relation to a relevant function, a person who is likely to be affected by, or otherwise interested in, the exercise of the function: Local Democracy, Economic Development and Construction Act 2009 s 23(7).

4 'Relevant functions' means (1) in relation to an authority specified in the Local Democracy, Economic Development and Construction Act 2009 s 23(2)(a)-(m), all the functions of the authority except in so far as those functions are not exercisable in or in relation to England; and (2) in relation to the Secretary of State, his functions under the Employment Training Act 1973 s 2, and the Offender Management Act 2007 ss 2, 3, except in so far as those functions are not exercisable in relation to England: Local Democracy, Economic Development and Construction Act 2009 s 23(3).

5 Local Democracy, Economic Development and Construction Act 2009 s 23(1). An authority is not required to take a step if it does not have the power to do so or if the step would be incompatible with any duty imposed on the authority: s 23(4). Section 23(1) does not apply in such cases as the Secretary of State may by order made by statutory instrument specify: s 23(5). Such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 23(6).

6 Before giving guidance, the Secretary of State must consult the authority or authorities (see NOTE 1) to which it is given: Local Democracy, Economic Development and Construction Act 2009 s 24(3). An authority to which s 23 applies must, in deciding how to fulfil its duties, have regard to any guidance given to it under s 24: s 24(4).

7 Local Democracy, Economic Development and Construction Act 2009 s 24(1).

8 Local Democracy, Economic Development and Construction Act 2009 s 24(2).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/580. Development and building control.

580. Development and building control.

In their capacity as local planning authorities¹, local authorities have a variety of functions in relation to planning, which are dealt with elsewhere in this work².

1 As to the meaning of 'local planning authority' see the Town and Country Planning Act 1990 s 1; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.

2 See **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.

UPDATE

579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/581. Excavations.

581. Excavations.

A district council, a London borough council, the Common Council of the City of London or, in Wales, a county or county borough council¹, has certain powers in relation to excavations² where:

- 522 (1) it considers that an excavation made at any time by some person on land³ in its area is accessible to the public from a highway⁴ or a place of public resort and, by reason of its being uninclosed or inadequately inclosed, is a danger to the public⁵; and
- 523 (2) it knows the name and address of no person appearing to it to be an owner⁶ or occupier of the land on which it appears to the council that works to remove the danger should be carried out, and either it has made reasonable but unsuccessful inquiries for the purpose of ascertaining the name and address of such a person⁷ or it considers that in view of the imminence of the danger the delay involved in making inquiries or further inquiries about the name and address of such a person is unwarranted⁸.

In these circumstances the council may carry out on the land mentioned in head (2) above such works as appear to it necessary for the purpose of removing the danger⁹.

Where the council considers that an excavation made at any time by some person on land in its area falls within head (1) above¹⁰ and knows the name and address of a person appearing to it to be an owner or occupier of the land on which it considers that works to remove the danger should be carried out¹¹, it may serve a notice on him specifying the excavation and stating that it proposes to carry out specified works to remove the danger¹². There is a right to appeal

against such a notice¹³. If no appeal is made¹⁴, or if an appeal is dismissed or the notice is modified on appeal, the council which served the notice may carry out the works specified in the notice at the places so specified¹⁵.

Where it appears to a council by which works have been carried out under these provisions that if the works were removed the excavation in question would not be a danger to the public, then the council may remove the works¹⁶; and, except so far as the works consist of the filling in of the excavation, the council is under a duty to remove the works if requested to do so by a person having an interest in or a right over the land on which they are situated¹⁷.

A council by which works have been carried out in pursuance of these powers is under a duty to maintain and repair the works except: (a) so far as they consist of the filling in of the excavation¹⁸; (b) after the works have been removed¹⁹; or (c) where the council has agreed with a person who is for the time being an owner or occupier of the land on which the works are situated that he is to maintain and repair the works and he has performed his obligations under the agreement²⁰.

A person authorised in that behalf by a council may enter on any land²¹ in the council's area for the purpose of: (i) ascertaining whether it is suitable as the site of works²²; (ii) carrying out, maintaining, repairing or removing any works on behalf of the council²³; (iii) ascertaining whether any works carried out by the council should be or have been maintained, repaired or removed²⁴. A person is guilty of an offence and liable on summary conviction to a fine if ²⁵: (A) he wilfully obstructs another person in the exercise of a power conferred by these provisions²⁶; or (B) while another person is on land²⁷, he wilfully obstructs that person in doing things connected with the works in question²⁸; or (C) he removes or otherwise interferes with the works without the agreement of the council by which the works have been carried out²⁹.

If a person having an interest in or a right over any land suffers damage in consequence of the carrying out, maintaining, repairing or removing of works by a council³⁰, or in consequence of the exercise by a person authorised by a council of a power of entry³¹, or in consequence of a failure of such a person to secure the land against trespassers³², he is entitled to receive compensation from the council³³.

A district council, a London borough council, the Common Council of the City of London or, in Wales, a county or county borough council may pay to any person the whole or part of the expenses incurred by him in carrying out works for preventing or removing danger to the public from an excavation made at any time by some person on land in the authority's area, whether or not the person who incurred the expenses had a duty to carry out any such works³⁴.

1 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 See the Local Government (Miscellaneous Provisions) Act 1976 s 25(1) (amended by the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 1(3)).

3 As to the meaning of 'land' see PARA 509 note 4. These powers to deal with dangerous excavations do not, however, apply to an excavation on operational land of statutory undertakers (Local Government (Miscellaneous Provisions) Act 1976 s 26(6)(a)), or on land of the Coal Authority of such a description as the Secretary of State or the Welsh Ministers may specify by regulations made by statutory instrument (s 26(6)(b) (amended by the Coal Industry Act 1994 s 67, Sch 9 para 18(2))). As to the meaning of 'operational land' see the Town and Country Planning Act 1990 s 263; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1010 (definition applied by the Local Government (Miscellaneous Provisions) Act 1976 s 26(6) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 35(3))). As to the meaning of 'statutory undertakers' see PARA 532 note 13. As to the Coal Authority see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 52 et seq. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 'Highway' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 7); Local Government (Miscellaneous Provisions) Act 1976 s 44(1) (definition amended by the Highways Act 1980 s 343(2), Sch 24).

- 5 Local Government (Miscellaneous Provisions) Act 1976 s 25(1)(a) (as amended: see note 2).
- 6 As to the meaning of 'owner' see PARA 532 note 12.
- 7 Local Government (Miscellaneous Provisions) Act 1976 s 25(1)(b)(i) (as amended: see note 2).
- 8 Local Government (Miscellaneous Provisions) Act 1976 s 25(1)(b)(ii) (as amended: see note 2).
- 9 Local Government (Miscellaneous Provisions) Act 1976 s 25(1) (as amended: see note 2).
- 10 See Local Government (Miscellaneous Provisions) Act 1976 s 25(2)(a).
- 11 See Local Government (Miscellaneous Provisions) Act 1976 s 25(2)(b).
- 12 See Local Government (Miscellaneous Provisions) Act 1976 s 25(2).
- 13 Any person having an interest in or a right over land in respect of which a notice is served in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 25(2) may appeal to the county court against the notice during the period of 21 days beginning with the date on which the notice is served, if he objects to the notice on one or more of the following grounds (see s 25(3)), namely: (1) that the excavation is not a danger to the public (s 25(3)(a)); or (2) that works other than some or all of those specified in the notice are appropriate for the purpose of removing the danger (s 25(3)(b)); or (3) that places other than some or all of those so specified are appropriate as the site of works for removing the danger (s 25(3)(c)). On such an appeal the court must either quash the notice or dismiss the appeal or, where a ground of the appeal is the ground specified in head (2) or head (3), modify the notice so that it refers only to works or, as the case may be, places which the appellant agrees or the appellants agree are appropriate for the purpose of removing the danger; but the notice may not be modified by the court so as to refer to a place or land of which no appellant is an owner or occupier: s 25(4).
- 14 le within the period mentioned in the Local Government (Miscellaneous Provisions) Act 1976 s 25(3): see note 13.
- 15 Local Government (Miscellaneous Provisions) Act 1976 s 25(5). The council may carry out the works at any time after the expiration of the period during which an appeal may be made or, as the case may be, after the appeal is dismissed or the notice is modified: see s 25(5).
- 16 Local Government (Miscellaneous Provisions) Act 1976 s 25(7)(a).
- 17 Local Government (Miscellaneous Provisions) Act 1976 s 25(7)(b).
- 18 Local Government (Miscellaneous Provisions) Act 1976 s 25(6)(a).
- 19 Local Government (Miscellaneous Provisions) Act 1976 s 25(6)(b). The reference in the text to the removal of works is to the removal of the works in pursuance of s 25(7) (see the text and notes 16-17).
- 20 Local Government (Miscellaneous Provisions) Act 1976 s 25(6)(c).
- 21 He must, if so required before or after entering on the land, produce evidence of his authority to enter (Local Government (Miscellaneous Provisions) Act 1976 s 26(2)(a)), and may take with him on to the land such other persons and such equipment as are necessary for achieving the purpose for which he was authorised to enter on the land (s 26(2)(b)). If the land is unoccupied when he enters or the occupier is then temporarily absent, the person entering must leave the land as effectually secured against trespassers as he found it: s 26(2)(c).
- 22 Local Government (Miscellaneous Provisions) Act 1976 s 26(1)(a). The reference in the text to works is to works which the council may carry out or for which the council may serve a notice in pursuance of s 25 (see the text and notes 1-20).
- 23 Local Government (Miscellaneous Provisions) Act 1976 s 26(1)(b).
- 24 Local Government (Miscellaneous Provisions) Act 1976 s 26(1)(c).
- 25 Local Government (Miscellaneous Provisions) Act 1976 s 26(5). The penalty is a fine not exceeding level 3 on the standard scale: see s 26(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7.

26 See the Local Government (Miscellaneous Provisions) Act 1976 s 26(5)(a) (as so amended: see note 25). The reference in the text to the power conferred is to the power conferred by s 26(1) (see the text and notes 21-24) or s 26(2)(b) (see note 21).

27 Ie in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 26(2)(b) (see note 21).

28 See the Local Government (Miscellaneous Provisions) Act 1976 s 26(5)(b) (as so amended: see note 25).

29 See the Local Government (Miscellaneous Provisions) Act 1976 s 26(5)(c) (as so amended: see note 25).

30 Ie in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 25 (see the text and notes 1-20).

31 Ie a power conferred by the Local Government (Miscellaneous Provisions) Act 1976 s 26(1) (see the text and notes 21-24) or s 26(2)(b) (see note 21).

32 Ie the failure to perform the duty imposed by the Local Government (Miscellaneous Provisions) Act 1976 s 26(2)(c) (see note 21).

33 Local Government (Miscellaneous Provisions) Act 1976 s 26(3). No compensation is payable to any person having an interest in the site of the excavation in respect of damage attributable to the presence of permanent works on any land, other than damage attributable to interference with an easement or profit: s 26(4). Any dispute as to a person's entitlement to compensation or as to the amount of the compensation is to be determined by the Upper Tribunal; and the Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) are to apply with the necessary modifications in relation to the determination by the Upper Tribunal of such a dispute: Local Government (Miscellaneous Provisions) Act 1976 s 24(5), 26(3) (s 24(5) amended by SI 2009/1307). As to the Upper Tribunal see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) para 13A.

34 Local Government (Miscellaneous Provisions) Act 1976 s 25(8) (amended by the Local Government Act 2000 s 107, Sch 6; and SI 1996/3071).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/582. Restoration or continuation of supply of water, gas or electricity.

582. Restoration or continuation of supply of water, gas or electricity.

If any premises in the area of a district council, a London borough council, the Common Council of the City of London or, in Wales, a county or county borough council¹ are occupied as a dwelling and the supply of water, gas or electricity to the premises is either²:

- 524 (1) cut off in consequence of the failure of the owner or former owner³ of the premises to pay a sum payable by him in connection with the supply⁴; or
- 525 (2) in the council's opinion likely to be cut off in consequence of such a failure⁵,

the council may, at the occupier's written request, make such arrangements as it thinks fit with the person who provided the supply for it to be restored to the premises or, as the case may be, for it to be continued to the premises⁶.

Where, under arrangements made in pursuance of these provisions in respect of any premises, a council makes a payment in respect of a sum which, at the time when the relevant supply to

the premises was or became likely to be cut off, a person was liable to pay in connection with the supply to the person who provided it, the council is entitled to demand and recover a sum equal to the payment from the person liable; and where under such arrangements a council makes a payment in respect of the restoration of a supply to any premises or a payment for a supply to any premises, it is entitled to demand and recover from the owner of the premises a sum equal to the payment reduced by any amount received⁷ by the council in respect of the payment⁸.

Where by virtue of these provisions a council is entitled to recover from the owner of any premises a sum on account of a payment in respect of the restoration or continuation of a supply to the premises or a payment for a supply to the premises or interest on such a sum, then the sum so recoverable together with any interest accrued due is, until recovered, a charge on the premises concerned⁹. If the owner is, under the terms on which a person occupies the premises, required to pay for a supply of the kind to which the sum relates¹⁰, and the council has served a notice on that person requiring him to pay the rent which is or becomes payable by him to the council instead of to the owner of the premises¹¹, that person must comply with the notice except so far as the council directs otherwise and the council may recover from him from time to time sums equal to the rent in question¹².

1 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 Local Government (Miscellaneous Provisions) Act 1976 s 33(1) (amended by the Gas Act 1986 s 67(1), Sch 7 para 24; and SI 1996/3071).

3 For these purposes, 'owner', in relation to any premises, means a person who (apart from the Local Government (Miscellaneous Provisions) Act 1976 s 33(4): see the text and notes 9-12) is entitled on his own behalf or as a trustee or agent for another person to rent for the premises from the occupier of the premises; and 'former owner', in relation to any premises, means a person who was so entitled to rent for the premises from the occupier or former occupier of the premises: s 33(5).

4 Local Government (Miscellaneous Provisions) Act 1976 s 33(1)(a) (as amended: see note 2).

5 Local Government (Miscellaneous Provisions) Act 1976 s 33(1)(b) (as amended: see note 2).

6 Local Government (Miscellaneous Provisions) Act 1976 s 33(1) (as amended: see note 2).

7 Ie in pursuance of the Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (see the text and notes 9-12).

8 Local Government (Miscellaneous Provisions) Act 1976 s 33(2) (amended by the Gas Act 1986 Sch 7 para 24). The demand must be served on the recipient in writing (see the Local Government (Miscellaneous Provisions) Act 1976 s 33(3)(a)); it must give particulars of the payment to which the sum demanded relates (see s 33(3)(b)) and, if interest is payable, must state the rate of the interest and that interest is payable from the date of service (see s 33(3)(c)). A council by which a sum is recoverable from a person in pursuance of s 33(2) may also recover interest on the sum, from the date of service of the demand for the sum, at such reasonable rate as the council may determine: s 33(3) (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 21).

9 Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (amended by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 47). The charge takes effect from the date when the council makes the payment: Local Government (Miscellaneous Provisions) Act 1976 s 33(4A) (added by the Local Government and Housing Act 1989 Sch 11 para 47).

For the purpose of enforcing a charge the council has the same powers and remedies, under the Law of Property Act 1925 and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver; and the power to appoint a receiver is exercisable at any time after the expiry of one month from the date when the charge takes effect: Local Government (Miscellaneous Provisions) Act 1976 s 33(4A) (as so added). As to the remedies of mortgagees see **MORTGAGE** vol 77 (2010) PARA 514 et seq; as to a mortgagee's power of sale see **MORTGAGE** vol 77 (2010) PARA 440 et seq; and as to the appointment of receivers see **MORTGAGE** vol 77 (2010) PARA 475 et seq.

10 See the Local Government (Miscellaneous Provisions) Act 1976 s 33(4)(a) (as amended: see note 9).

11 See Local Government (Miscellaneous Provisions) Act 1976 s 33(4)(b) (as amended: see note 9).

12 Local Government (Miscellaneous Provisions) Act 1976 s 33(4) (as amended: see note 9).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/583. Recovery of establishment charges.

583. Recovery of establishment charges.

Where a local authority¹:

- 526 (1) is empowered under any enactment to carry out any works or do any other thing on or in relation to any land or building²; and
- 527 (2) by virtue of that or any other enactment is entitled to recover from any person expenses incurred by it in exercising that power³,

it is entitled to recover, together with and in like manner as the expenses which are recoverable under head (2) above, such sum as appears to it to be reasonable in respect of its establishment charges⁴.

1 As to the meaning of 'local authority' for these purposes see PARA 618 note 1; definition applied by the Local Government Act 1974 s 36(3). As to the meaning of 'local authority' generally see PARA 23.

2 Local Government Act 1974 s 36(1)(a).

3 Local Government Act 1974 s 36(1)(b).

4 Local Government Act 1974 s 36(1). This provision has effect in substitution for any provision contained in any enactment, including an enactment in a local Act, under which a local authority which has exercised any such power as is referred to in s 36(1)(a) (see head (1) in the text) has power to recover any sum in respect of its establishment charges or any element or elements of those charges: s 36(2).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/584. Environmental health and waste management.

584. Environmental health and waste management.

The following general descriptions of functions conferred on local authorities with regard to the environment¹ are discussed elsewhere in this work: public health²; protection of the environment³; water and sewerage⁴; town and country planning⁵; national parks and the countryside⁶; traffic and transportation⁷; and highways⁸.

1 Functions relating to housing, which might be regarded as relating to the environment, are dealt with elsewhere in this work: see PARA 591; and **HOUSING**.

2 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**. As to health authorities and the national health service see **HEALTH SERVICES**.

3 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS**.

4 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS**.

5 See **TOWN AND COUNTRY PLANNING**. As to the acquisition and disposal of land see PARA 509 et seq. As to the compulsory acquisition of land see also **COMPULSORY ACQUISITION OF LAND**.

6 See **OPEN SPACES AND COUNTRYSIDE**.

7 See **AIR LAW; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES; ROAD TRAFFIC**. As to integrated transport authorities see the Local Government Act 1985 s 28; and PARA 49. Parish councils and community councils have powers in relation to: (1) car-sharing schemes (see the Local Government and Rating Act 1997 s 26; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1531); (2) grants for bus services (see the Transport Act 1985 s 106A; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1297); (3) taxi fare concessions (see the Local Government and Rating Act 1997 s 28; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1499); (4) information about transport (see s 29; and **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1253). As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

8 See **HIGHWAYS, STREETS AND BRIDGES; ROAD TRAFFIC**. As to the powers of parish councils and community councils in relation to traffic calming works see the Highways Act 1980 s 274A; and **HIGHWAYS, STREETS AND BRIDGES**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/585. Consumer protection.

585. Consumer protection.

The following general descriptions of functions conferred on local authorities with regard to consumer protection are discussed elsewhere in this work: consumer protection generally¹; food safety²; health and safety at work³; medicines⁴; street trading⁵; weights and measures⁶.

1 See generally **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 397.

2 See **FOOD**.

3 See **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 372 et seq.

4 See **MEDICINAL PRODUCTS AND DRUGS**.

5 See **MARKETS, FAIRS AND STREET TRADING**.

6 See **WEIGHTS AND MEASURES**; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 398.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/586. Home safety.

586. Home safety.

A district council¹ may promote safety in the home by publishing or making arrangements for otherwise giving information or advice relating to the prevention to accidents in the home².

1 See the Home Safety Act 1961 s 1(4) (amended by the London Government Act 1963 ss 83(1), 93(1), Sch 17 para 29(4), Sch 18 Pt II).

2 Home Safety Act 1961 s 1(1). A district council may also make contributions to non-profit organisations for this purpose: see s 1(2); and PARA 611.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/587. Health services.

587. Health services.

A local authority's functions as one of a range of bodies involved in consultative arrangements with the National Health Service are discussed fully elsewhere in this work¹.

1 See **HEALTH SERVICES**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/588. Social care.

588. Social care.

The social services functions of local government comprise a number of diverse functions conferred upon social service authorities¹, all of which stand referred to the statutory social services committee of the relevant authority². The social services functions of a local authority are its functions under specified enactments³ and such other of its functions as may be designated⁴ by the Secretary of State or the Welsh Ministers⁵. Social services generally, including the social services functions of local authorities, are dealt with elsewhere in this work⁶.

1 For the authorities which are social services authorities see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1005.

2 As to social services committees see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006. As to the duty to secure adequate staff to deal with social services functions see PARA 425.

3 Local Authority Social Services Act 1970 s 1A(a) (s 1A added by the Local Government Act 2000 s 102(3)). The specified enactments, and the specified functions under them, are listed in the Local Authority Social Services Act 1970 Sch 1: see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006. As to social services functions see also the Local Government Act 1972 s 195 (amended by the Health Services Act 1980 s 23; and the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 para 40, Sch 18).

4 Ie designated by order made under the Local Authority Social Services Act 1970 s 1A (as added: see note 3).

5 Local Authority Social Services Act 1970 s 1A(b) (as added: see note 3). As to the powers of the Secretary of State or the Welsh Ministers in relation to the exercise of social services functions by local authorities see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011. See also *R v Islington London Borough Council, ex p Rixon* [1997] ELR 66, (1996) 32 BMLR 136 (if the statutory guidelines issued under the Local Authority Social Services Act 1970 are to be departed from, it must be for good reason). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 See **SOCIAL SERVICES AND COMMUNITY CARE**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/589. Children.

589. Children.

In their capacity as children's services authorities¹, local authorities have a wide range of duties and powers in relation to children which are dealt with elsewhere in this work².

1 As to children's services authorities see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187 et seq.

2 See **CHILDREN AND YOUNG PERSONS**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/590. Education.

590. Education.

In their capacity as local education authorities¹, local authorities have a variety of functions in relation to education which are dealt with elsewhere in this work².

1 As to local education authorities see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 et seq.

2 See **EDUCATION**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/591. Housing.

591. Housing.

In their capacity as local housing authorities¹, local authorities have a variety of functions in relation to housing which are dealt with elsewhere in this work².

1 As to local housing authorities see **HOUSING** vol 22 (2006 Reissue) PARA 9.

2 See **HOUSING**. As to the power to acquire land for housing purposes see PARA 524.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/592. Highways, traffic management and transport.

592. Highways, traffic management and transport.

Local authorities have a variety of functions in relation to highways, traffic management and transport¹ which are dealt with elsewhere in this work².

¹ In their capacity as, eg, highways authorities (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 56 et seq), local traffic authorities, traffic authorities (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 731), and integrated transport authorities (see **ROAD TRAFFIC**).

² See **HIGHWAYS, STREETS AND BRIDGES; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES; ROAD TRAFFIC**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/593. Police, emergency services and civil contingencies.

593. Police, emergency services and civil contingencies.

Local authorities are represented on each police authority¹ in England and Wales, and a police authority constitutes a local authority for certain purposes². The functions of police authorities are dealt with elsewhere in this work³.

With the exception of Greater London⁴, local authorities are responsible for fire and rescue functions in their area⁵, which are dealt with elsewhere in this work⁶.

Local authorities are in general category 1 responders⁷ for the purposes of emergency planning legislation and therefore are obliged to assess the risk of emergencies occurring and to make plans for dealing with those emergencies, as well as preventing, reducing, mitigating or otherwise taking action in response to an emergency⁸. Advice about the same must also be provided to the public⁹.

¹ As to police authorities, see **POLICE** vol 36(1) (2007 Reissue) PARA 139.

² See PARA 23.

³ See **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

⁴ The London Fire and Emergency Planning Authority is the fire and rescue authority for Greater London: see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; and **LONDON GOVERNMENT**.

⁵ See **FIRE SERVICES** vol 18(2) (Reissue) PARA 17 et seq.

6 See **FIRE SERVICES**.

7 As to category 1 responders see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 542.

8 See the Civil Contingencies Act 2004 s 2; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 544.

9 See the Civil Contingencies Act 2004 s 4; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 548.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/594. Crime and disorder.

594. Crime and disorder.

A local authority may provide and maintain closed-circuit television if they consider that it will promote the prevention of crime or the welfare of victims of crime¹. In addition, a parish council or community council² may, for the detection or prevention of crime in its area: (1) install and maintain any equipment³; (2) establish and maintain any scheme⁴; or (3) assist others to install and maintain any equipment or to establish and maintain any scheme⁵.

1 See the Criminal Justice and Public Order Act 1994 s 163; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 855. Cf the Local Government Act 1972 s 111 (see PARA 425); and the Local Government Act 2000 s 2 (see PARA 463). As to CCTV footage and the invasion of privacy see *Peck v United Kingdom* [2003] IP & T 320, (2003) Times, 3 February, [2003] EMLR 287; and *Friedl v Austria* [1995] ECHR 15225/89, 21 EHRR 83.

2 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

3 Local Government and Rating Act 1997 s 31(1)(a).

4 Local Government and Rating Act 1997 s 31(1)(b).

5 Local Government and Rating Act 1997 s 31(1)(c).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/595. Culture, sport and recreation.

595. Culture, sport and recreation.

A local authority¹ may provide, either inside or outside its area, such recreational facilities as it thinks fit, including²:

- 528 (1) indoor facilities consisting of sports centres, swimming pools, skating rinks, tennis, squash and badminton courts, bowling centres, dance studios and riding schools³;
- 529 (2) outdoor facilities consisting of pitches for team games, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling greens, riding schools, camp sites and facilities for gliding⁴;
- 530 (3) facilities for boating and water-skiing on inland and coastal waters and for fishing in such waters⁵;
- 531 (4) premises for the use of clubs or societies having athletic, social or recreational objects⁶;
- 532 (5) staff, including instructors, in connection with any facilities or premises mentioned in heads (1) to (4) above and in connection with any other recreational facilities provided by the authority⁷;
- 533 (6) such facilities in connection with any other recreational facilities as the authority considers it appropriate to provide, including⁸ facilities by way of parking spaces and places at which food, drink and tobacco may be bought from the authority or another person⁹.

These powers include powers to provide buildings, equipment, supplies and assistance of any kind¹⁰.

A local authority may make any facilities so provided by it available for use by such persons as it thinks fit, either without charge or on payment of such charges as it thinks fit¹¹. It may contribute: (a) by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation¹² in providing any recreational facilities which the authority has power to provide under these provisions¹³; and (b) by way of grant towards the expenses incurred or to be incurred by any other local authority in providing such facilities¹⁴.

1 As to the meaning of 'local authority' see PARA 23. The Local Government (Miscellaneous Provisions) Act 1976 s 19 has effect as if the powers conferred by that provision were also conferred, so as to be exercisable within a national park for which a national park authority is the local planning authority, on that authority: Environment Act 1995 s 70, Sch 9 para 8. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 For the duty of local education authorities to provide recreational facilities for persons receiving primary, secondary or further education see **EDUCATION**. As to the power to provide recreational facilities in public parks and pleasure grounds see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 559; and as to the power to provide swimming pools see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 981.

3 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(a).

4 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(b).

5 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(c).

6 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(d).

7 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(e).

8 Ie without prejudice to the generality of the provisions of the Local Government (Miscellaneous Provisions) Act 1976 s 19(1): see s 19(1)(f).

9 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(f).

10 Local Government (Miscellaneous Provisions) Act 1976 s 19(1). Any property which immediately before 14 February 1977 was held by a local authority for the purposes of the Public Health Act 1936 s 221(b) (repealed) or for the purposes of the Physical Training and Recreation Act 1937 s 4 (repealed) or, in pursuance

of the Local Government Act 1972 s 144(1)(b) (repealed in so far as it relates to recreational facilities), for the purposes of recreation is held on and after that date by the local authority for the purposes of the Local Government (Miscellaneous Provisions) Act 1976 s 19: s 19(5) (amended by the Education Reform Act 1988 s 237(2), Sch 13 Pt I).

11 Local Government (Miscellaneous Provisions) Act 1976 s 19(2). As to the power to let these facilities see the Local Government Act 1972 ss 123, 127; and PARAS 515, 520. As to the power to make charges for baths and wash-houses, and the obligation to advertise any such proposed charges, see the Public Health Act 1936 s 222(1); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 982.

12 'Voluntary organisation' means any person carrying on or proposing to carry on an undertaking otherwise than for profit: Local Government (Miscellaneous Provisions) Act 1976 s 19(3). As to the duty to consult with the relevant voluntary sector organisations likely to be affected by funding decisions see *R v Islington London Borough Council, ex p East* [1996] ELR 74.

13 Local Government (Miscellaneous Provisions) Act 1976 s 19(3)(a).

14 Local Government (Miscellaneous Provisions) Act 1976 s 19(3)(b).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/596. Provision of entertainments.

596. Provision of entertainments.

A local authority¹ may do, or arrange for the doing of, or contribute towards the expenses of the doing of, anything, whether inside or outside its area, necessary or expedient for any of the following purposes²:

- 534 (1) the provision of an entertainment of any nature or of facilities for dancing³;
- 535 (2) the provision of a theatre, concert hall, dance hall or other premises suitable for the giving of entertainments or the holding of dances⁴;
- 536 (3) the maintenance of a band or orchestra⁵;
- 537 (4) the development and improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts⁶; or
- 538 (5) any purpose incidental to heads (1) to (4) above, including the provision of refreshments or programmes and the advertising of any entertainment given or dance or exhibition of arts or crafts held by it⁷.

Without prejudice to the generality of these provisions, a local authority may⁸:

- 539 (a) for the above purposes inclose or set apart any part of a park or pleasure ground belonging to it or under its control⁹;
- 540 (b) permit any theatre, concert hall, dance hall or other premises provided by it for the above purposes and any part of a park or pleasure ground so inclosed or set apart to be used by any other person, on such terms as to payment or otherwise as the authority thinks fit, and authorise that other person to make admission charges¹⁰; and

- 541 (c) itself make charges for admission to any entertainment given or dance or exhibition of arts or crafts held by it and for any refreshment or programmes there supplied¹¹.

1 As to the meaning of 'local authority' see PARA 23. For the purposes of the Local Government Act 1972 s 145 (see the text and notes 2-11), 'local authority' includes the Common Council of the City of London: see ss 145(5), 270(1). As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**.

2 Local Government Act 1972 s 145(1). Nothing in s 145 affects the provisions of any enactment by virtue of which a licence is required for the public performance of a stage play or the public exhibition of cinematograph films, or for boxing or wrestling entertainments or for public music or dancing, or for the sale of alcohol: s 145(4) (amended by the Licensing Act 2003 s 198(1), Sch 6 paras 56, 59). As to these matters see **LICENSING AND GAMBLING**.

3 Local Government Act 1972 s 145(1)(a).

4 Local Government Act 1972 s 145(1)(b).

5 Local Government Act 1972 s 145(1)(c).

6 Local Government Act 1972 s 145(1)(d).

7 Local Government Act 1972 s 145(1)(e).

8 See the Local Government Act 1972 s 145(2). This provision does not authorise any local authority to contravene any covenant or condition subject to which a gift or lease of a public park or pleasure ground has been accepted or made without the consent of the donor, grantor, lessor or other person entitled in law to the benefit of the covenant or condition: s 145(3). For the power to accept gifts of property see PARA 528.

9 Local Government Act 1972 s 145(2)(a). As to the power of local authorities to provide or manage parks and pleasure grounds see **OPEN SPACES AND COUNTRYSIDE**.

10 Local Government Act 1972 s 145(2)(b).

11 Local Government Act 1972 s 145(2)(c).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/597. Pleasure boats.

597. Pleasure boats.

A local authority¹ may grant upon such terms and conditions as it thinks fit licences for pleasure boats and pleasure vessels to be let for hire² or to be used for carrying passengers for hire, and to the persons in charge of or navigating such boats and vessels, and may charge for each type of licence such annual fee as appears to it to be appropriate³.

Any such licence may be granted for such period as the local authority thinks fit, and may be suspended or revoked by it whenever it deems such suspension or revocation to be necessary or desirable in the interests of the public, provided that the existence of the power to suspend or revoke the licence is plainly set forth in the licence itself⁴.

No person may let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor may any person carry or permit to be carried passengers for hire in any pleasure boat or vessel unless: (1) the boat or vessel is so licensed and the licence is not suspended⁵; and (2) the person in charge of the boat or vessel and any other person navigating it is so licensed and his licence is not suspended and the conditions of his licence are complied with⁶. No person may carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than is specified in the licence applying to the boat or vessel⁷. Before permitting any such boat or vessel to be used for carrying passengers for hire, the owner of the boat or vessel must paint or cause to be painted, on a conspicuous part of the boat or vessel, his own name and the number of persons which it is licensed to carry⁸. Every person who acts in contravention of these provisions is liable to a penalty for each offence⁹.

Any person deeming himself aggrieved by the withholding, suspension or revocation of a licence may appeal against the decision¹⁰.

A local authority may provide a boating pool in any park or pleasure ground provided by it or under its management or control¹¹; and, where there is a lake or other piece of water in a park or pleasure ground provided by it, the authority may provide and let for hire or may license persons to let for hire pleasure boats¹².

A district council, a London borough council, the Common Council of the City of London or the council of a Welsh county or county borough¹³ may make byelaws: (a) for regulating the numbering and naming of pleasure boats and vessels which are let for hire to the public, and the mooring places for such boats and vessels; (b) for fixing the qualifications of the boatmen or other persons in charge of such boats or vessels; and (c) for securing their good and orderly conduct while in charge¹⁴.

1 As to the meaning of 'local authority' see PARA 23.

2 'Let for hire' means let for hire to the public: Public Health Acts Amendment Act 1907 s 94(9) (added by the Local Government, Planning and Land Act 1980 s 186).

3 Public Health Acts Amendment Act 1907 s 94(1) (amended by the Local Government Act 1974 s 35(1), Sch 6 para 1; and the Local Government (Miscellaneous Provisions) Act 1976 s 18(1)). A licence is not required for any boat or vessel duly licensed by or under any regulations of the Secretary of State or the Welsh Ministers or for a person in charge of or navigating such a boat or vessel (Public Health Acts Amendment Act 1907 s 94(4) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 18(3))); nor is a licence required in respect of pleasure boats and pleasure vessels on any inland waterway owned or managed by the British Waterways Board (Public Health Acts Amendment Act 1907 s 94(8) (added by the Local Government, Planning and Land Act 1980 s 186; and substituted by the Deregulation (Public Health Acts Amendment Act 1907) Order 1997, SI 1997/1187, art 2)). The Public Health Acts Amendment Act 1907 s 94(4) (as so amended) refers to the Board of Trade, but the functions of the board are now generally exercised concurrently by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 505. See also **TRADE AND INDUSTRY**. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the British Waterways Board, and as to inland waterways, see **WATER AND WATERWAYS**.

4 Public Health Acts Amendment Act 1907 s 94(2).

5 Public Health Acts Amendment Act 1907 s 94(3)(a) (s 94(3) amended by the Local Government (Miscellaneous Provisions) Act 1976 s 18(2)).

6 Public Health Acts Amendment Act 1907 s 94(3)(b) (as amended: see note 5).

7 Public Health Acts Amendment Act 1907 s 94(5).

8 Public Health Acts Amendment Act 1907 s 94(5). The owner's name and the number of passengers, in the form 'Licensed to carry . . . persons' (with the appropriate number inserted), must be painted in letters and figures not less than one inch in height and three-quarters of an inch in breadth: s 94(5).

9 Public Health Acts Amendment Act 1907 s 94(6) (amended by the Criminal Justice Act 1967 s 92(1), Sch 3 Pt I; and the Local Government (Miscellaneous Provisions) Act 1976 s 18(4)). The penalty is a fine not exceeding level 3 on the standard scale: see the Public Health Acts Amendment Act 1907 s 94(6) (amended by the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7. A person is not guilty of an offence under the Public Health Acts Amendment Act 1907 s 94(6) (as so amended) by reason of a failure to comply with the conditions mentioned in s 94(3)(b) (see the text and note 6) if it is shown that there is a reasonable excuse for the failure: s 94(6) (as so amended).

10 See the Public Health Acts Amendment Act 1907 s 94(7) (amended by the Courts Act 2003 Sch 8 para 66). The person aggrieved may appeal to a magistrates' court held after the expiration of two clear days after the withholding, suspension or revocation, and must give 24 hours' written notice of the appeal, and the ground of appeal: see the Public Health Acts Amendment Act 1907 s 94(7) (as so amended). The court may make such order as it sees fit and may award costs, which are recoverable summarily as a civil debt: see s 94(7) (as so amended). As to the procedure on appeals to magistrates see **MAGISTRATES**.

11 See the Public Health Act 1961 s 54(1); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 559.

12 See the Public Health Acts Amendment Act 1890 s 44(2); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 559.

13 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

14 Local Government, Planning and Land Act 1980 s 185(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 59(4)). Byelaws may not, however, be made in relation to pleasure boats or vessels operating (1) on any water owned or managed by the British Waterways Board; (2) on any inland waters (within the meaning of the Water Resources Act 1991: see **WATER AND WATERWAYS** vol 100 (2009) PARA 187 note 2) in respect of which the Environment Agency may make byelaws by virtue of s 210, Sch 25 para 1 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 709); (3) on any canal or other inland navigation which a navigation authority (as defined in the Water Resources Act 1963 s 135(1) (repealed with savings)) is required or empowered to manage or maintain under any enactment; or (4) on any harbour maintained or managed by a harbour authority (as defined in the Harbours Act 1964 s 57(1): see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619): Local Government, Planning and Land Act 1980 s 185(2) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 35; and SI 1996/593). The provision in head (3) does not preclude a local authority making byelaws in relation to pleasure boats or vessels operating on any canal or inland navigation which it is required or empowered to manage or maintain itself: Local Government, Planning and Land Act 1980 s 185(3). As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 68 et seq. As to the power to make byelaws relating to pleasure boats on lakes or other water in parks or pleasure grounds see the Public Health Acts Amendment Act 1890 s 44(2). As to the power to make byelaws relating to the speed, use and noise of seaside pleasure boats so as to prevent danger, obstruction and annoyance to bathers and persons using the seashore: see the Public Health Act 1961 s 76; and **WATER AND WATERWAYS** vol 100 (2009) PARA 56. As to byelaws generally see PARA 553 et seq.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/598. Visitors, conferences, trade fairs, etc.

598. Visitors, conferences, trade fairs, etc.

A local authority¹ may either alone or jointly with any other person or body encourage persons, by advertisement or otherwise, to visit its area for recreation, for health purposes, or to hold conferences, trade fairs and exhibitions in its area². It may provide or encourage any other person or body to provide facilities for conferences, trade fairs and exhibitions or improve, or encourage any other person or body to improve, any existing facilities for those purposes³.

A local authority may contribute to any organisation approved by the Secretary of State or the Welsh Ministers⁴ for the purposes of this provision and established for the purpose of encouraging persons to visit the United Kingdom or any part of it⁵.

1 As to the meaning of 'local authority' see PARA 23. For the purposes of the Local Government Act 1972 s 144 (see the text and notes 2-5), 'local authority' includes the Common Council of the City of London: ss 144(5), 270(1). As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**.

2 Local Government Act 1972 s 144(1)(a).

3 Local Government Act 1972 s 144(1)(b) (amended by the Local Government (Miscellaneous Provisions) Act 1976 s 81(1), Sch 2). As to property held for the purposes of recreation see the Local Government (Miscellaneous Provisions) Act 1976 s 19; and PARA 595.

4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 Local Government Act 1972 s 144(2). This provision is without prejudice to s 144(1) (see the text and notes 1-3); see s 144(2). As to the meaning of 'United Kingdom' see PARA 116 note 18.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/599. Civic restaurants.

599. Civic restaurants.

A civic restaurant authority¹ may establish and carry on restaurants and otherwise provide for the supply to the public of meals and refreshments, and may carry on such activities as are reasonably incidental or ancillary to those activities². In carrying on any such activities a civic restaurant authority is subject to all enactments and rules of law relating thereto, including the Licensing Act 2003 and any other enactments relating to the sale of intoxicating liquor, in like manner as other persons carrying on the like activities³. Every civic restaurant authority must keep an account of its income and expenditure⁴ and must use its best endeavours to ensure that its income is sufficient to defray its expenditure⁵.

1 'Civic restaurant authority' means an authority exercising powers under the Civic Restaurants Act 1947 s 1: s 1(3) (amended by the Local Government Act 1972 s 272(1), Sch 30). The authorities that may exercise these powers are the council of a district or London borough or the Common Council of the City of London and, in Wales, the council of a county or county borough: see the Civic Restaurants Act 1947 s 1(1)(a), (b) (amended by the Local Government Act 1963 s 83(1), Sch 17 para 9(a); the Local Government Act 1972 s 272(1), Sch 30; and by virtue of the Local Government Act 1972 s 179(1), (3); and the Local Government (Wales) Act 1994 s 17). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 Civic Restaurants Act 1947 s 1(1).

3 Civic Restaurants Act 1947 s 1(4) (amended by the Licensing Act 2003 s 198(1), Sch 6 para 18). As to licences to sell intoxicating liquor in restaurants see **LICENSING AND GAMBLING** vol 67 (2008) PARA 215. A licence for the sale of intoxicating liquor may not be granted in respect of a civic restaurant established in premises forming part of or used for the purposes of a church, chapel or other place of religious worship or used for the

purposes of any religious organisation except with the consent of the incumbent, minister or other person in charge or of the religious organisation: s 1(1) proviso (iv).

4 See the Civic Restaurants Act 1947 s 3(1) (s 3(1), (2) amended by the Local Government Act 1974 ss 35(1), (2), 42(2), Sch 6 para 4, Sch 8).

5 Civic Restaurants Act 1947 s 3(2) (as amended: see note 4).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/600. Museums, art galleries and libraries.

600. Museums, art galleries and libraries.

Local authorities have power to provide and maintain museums and art galleries¹, and must provide comprehensive and efficient library services². Both roles are dealt with fully elsewhere in this work³.

1 See the Public Libraries and Museums Act 1964 ss 12-14; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 894.

2 See the Public Libraries and Museums Act 1964 s 7; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 913 et seq.

3 See **NATIONAL CULTURAL HERITAGE**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/601. Licensing.

601. Licensing.

In their capacity as licensing authorities¹, local authorities have extensive functions with regard to licensing the sale and supply of alcohol and related issues, which are dealt with elsewhere in this work². Similarly, local authorities have powers and functions with regard to the licensing of gambling facilities, which are also dealt with elsewhere in this work³.

1 See the Licensing Act 2003 s 3; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 3. Nothing in the Local Government Act 1972 s 101 applies in relation to any function under the Licensing Act 2003 of a licensing authority (within the meaning of that Act): Local Government Act 1972 s 101(15) (added by the Licensing Act 2003 Sch 6 para 58).

2 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 35 et seq.

3 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 344 et seq.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/602. Coroners, burials and cremation.

602. Coroners, burials and cremation.

Local authorities are involved in the appointment of district coroners¹. In their capacity as burial authorities² local authorities have functions with regard to the regulation and management of cemeteries and crematoria which are dealt with elsewhere in this work³.

1 See **CORONERS** vol 9(2) (2006 Reissue) PARA 907 et seq.

2 See **CREMATION AND BURIAL** vol 10 (Reissue) PARA 915.

3 See **CREMATION AND BURIAL**.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/603. Overseas assistance.

603. Overseas assistance.

A local authority¹ may provide advice and assistance as respects any matter in which it has skill and experience² to a body engaged outside the United Kingdom³ in the carrying on of any of the activities of local government⁴. The Secretary of State must provide local authorities with such guidance about the exercise of their powers under these provisions as he thinks appropriate⁵.

Nothing in these provisions authorises a local authority to provide any financial assistance by: (1) making a grant or loan; (2) giving a guarantee or indemnity; or (3) investing by acquiring share or loan capital⁶.

Any increase attributable to these provisions in the sums payable out of money provided by Parliament under any other enactment must be paid out of money provided by Parliament⁷.

1 For these purposes, 'local authority' means a county or district council in England, the council of a county or county borough in Wales, the Greater London Authority, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a fire and rescue authority constituted by a scheme under the Fire and Rescue Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24), an authority established under the Local Government Act 1985 s 10 (see PARA 17), a joint authority established by Pt IV (ss 23-42) (see PARA 47 et seq), a joint waste authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51), the London Fire and Emergency Planning Authority, a joint authority established by an order under the Local Government Act 1992 s 21 (repealed), the Broads Authority, the London Pensions Fund Authority, or a joint planning board constituted for an area in Wales outside a national park by an order under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); Local Government (Overseas Assistance) Act 1993 s 1(9), (10) (s 1(9) amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 103; and the Greater London Authority Act 1999 s 400(1), (3); and the Local Government (Overseas Assistance) Act 1993 s 1(10) amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; the Environment Act 1995 ss 78, 120(3), Sch 10 para 36, Sch 24; the Greater London Authority Act 1999 s 328(8), Sch 29 Pt I para 59; the Civil Contingencies Act 2004 s 32(1), Sch 2 Pt 1 para 10(3)(c); the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 Pt 2 para 50; and SI 2001/3618). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to the London Pensions Fund Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 225 et seq. As to the meaning of 'local authority' generally see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

The Secretary of State may by order made by statutory instrument amend the Local Government (Overseas Assistance) Act 1993 s 1(9) or s 1(10) so as to add any body or description of body to the bodies which are local authorities for these purposes; and any statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(11). As to orders which have been made under s 1(11) see the Local Government Overseas Assistance (London Pensions Fund Authority) Order 2001, SI 2001/3618. As to the Secretary of State see PARA 96.

2 For these purposes, the Greater London Authority must be treated as having skill and experience as respects a particular matter if: (1) the Greater London Authority does not have skill and experience as respects that matter; (2) the London Development Agency does have such skill and experience; and (3) the London Development Agency provides advice and assistance as respects that matter to the Greater London Authority: Local Government (Overseas Assistance) Act 1993 s 1(6A) (added by the Greater London Authority Act 1999 s 400(1), (2)). As to the London Development Agency see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988. See also **LONDON GOVERNMENT**.

3 As to the meaning of 'United Kingdom' see PARA 116 note 18.

4 Local Government (Overseas Assistance) Act 1993 s 1(1). In relation to any place outside the United Kingdom, activities must be taken for the purposes of this Act to be activities of local government wherever they are the equivalent of, or are comparable to, any activities which in any part of Great Britain are carried on, by virtue of the functions vested in them, by local authorities: s 1(2).

5 Local Government (Overseas Assistance) Act 1993 s 1(7).

6 Local Government (Overseas Assistance) Act 1993 s 1(6). See also **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

7 See the Local Government (Overseas Assistance) Act 1993 s 1(8).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

603 Overseas assistance

NOTE 1--Definition of 'local authority' in Local Government (Overseas Assistance) Act 1993 s 1(10) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 83.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/604. Promotion of or opposition to Bills.

604. Promotion of or opposition to Bills.

Where a local authority¹, other than a parish or community council², is satisfied that it is expedient to promote, or any local authority is satisfied that it is expedient to oppose, any local or personal Bill in Parliament, it may promote or oppose the Bill accordingly, and may defray the expenses incurred in relation to it³.

1 As to the meaning of 'local authority' see PARA 23.

2 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

3 Local Government Act 1972 s 239; and PARA 572.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/605. Welsh language schemes.

605. Welsh language schemes.

Every public body¹ to which a notice is given² requiring it to comply with these provisions, and which:

- 542 (1) provides services to the public in Wales³; or
- 543 (2) exercises statutory functions in relation to the provision by other public bodies of services to the public in Wales⁴,

must prepare a scheme specifying the measures which it proposes to take as to the use of the Welsh language in connection with the provision of those services, or of such of them as are specified in the notice⁵. The purpose of these measures is to give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh

languages should be treated on a basis of equality⁶. In preparing a scheme, a public body must have regard to any guidelines issued⁷ by the Welsh Language Board otherwise known as Bwrdd yr Iaith Gymraeg⁸.

Provision is made for the revision and operation of schemes, and for compliance with them⁹.

1 For these purposes, 'public body' includes, inter alia, a county council, county borough council, district council or community council, a joint committee of two or more of those bodies, and a joint board of which the members are two or more of those bodies: see the Welsh Language Act 1993 s 6(1)(a)-(c) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 106(1)); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44.

2 See under the Welsh Language Act 1993 s 7. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44; **STATUTES** vol 44(1) (Reissue) PARA 1368.

3 Welsh Language Act 1993 s 5(1)(a).

4 Welsh Language Act 1993 s 5(1)(b).

5 Welsh Language Act 1993 s 5(1). See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44; **STATUTES** vol 44(1) (Reissue) PARA 1368.

6 Welsh Language Act 1993 s 5(2).

7 See under the Welsh Language Act 1993 s 9. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44; **STATUTES** vol 44(1) (Reissue) PARA 1368.

8 Welsh Language Act 1993 s 5(3). As to the Welsh Language Board or Bwrdd yr Iaith Gymraeg see Pt I (ss 1-4); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44. See also **STATUTES** vol 44(1) (Reissue) PARA 1368.

9 See the Welsh Language Act 1993 Pt II (ss 5-21); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44. See also **STATUTES** vol 44(1) (Reissue) PARA 1368.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/606. Functions in relation to information.

606. Functions in relation to information.

Local authorities¹ have extensive functions with regard to relevant documents and records, in particular: custody of documents²; document on parliamentary or statutory deposit³; inspection of documents⁴; making copies of documents⁵; acquisition and deposit of records⁶; research and the collection of information⁷; reports and returns to the Secretary of State⁸; the promotion and use of records⁹; and the publishing of, and publicity concerning, information¹⁰.

1 As to the meaning of 'local authority' see PARA 23.

2 See PARAS 536, 537.

3 See PARA 538.

- 4 See PARA 539.
- 5 See PARA 540.
- 6 See PARA 541.
- 7 See PARA 542.
- 8 See PARA 543.
- 9 See PARA 544.
- 10 See PARAS 545-548.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/607. Subscriptions to local government associations.

607. Subscriptions to local government associations.

A local authority¹ may pay reasonable subscriptions, whether annually or otherwise, to the funds of any association of local authorities formed, whether inside or outside the United Kingdom², for the purpose of consultation as to the common interests of those authorities and the discussion of matters relating to local government³, or to the funds of any association of officers⁴ or members of local authorities which was so formed⁵.

1 For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 s 143(2). As to the meaning of 'local authority' generally see PARA 23. As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

2 As to the meaning of 'United Kingdom' see PARA 116 note 18.

3 Local Government Act 1972 s 143(1)(a).

4 As to officers see PARA 425 et seq.

5 Local Government Act 1972 s 143(1)(b). The associations are the founders, sponsors or appointing bodies for a number of linked or subsidiary bodies representative of the local authorities as employers of staff or as providers of services or finance: see PARA 437 (as to representation in employment negotiations).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/608. Transfer of securities.

608. Transfer of securities.

Provision is made for the transfer of any securities¹ standing in the books of a company² in the name of a local authority³ in certain circumstances.

If the name of the authority is changed⁴, the company must enter the securities in the new name at the request of the authority and on production of a statutory declaration by its proper officer⁵ specifying the securities and verifying the change of name and identity of the company⁶.

If any other local authority has become entitled (by virtue of anything done under any provision of the London Government Act 1963 or the Local Government Act 1972 or any enactment⁷ similar to any such provision, whenever passed) to the security or any dividends or interest, a certificate of the proper officer of the council of the county or the principal area in which that other authority's area is situated, or the scheme, order or award under which that other authority has become so entitled, is sufficient authority to the company to transfer the securities to the other authority and to pay the dividends or interest to it⁸. If (in any other case) any other local authority has become entitled to any securities or any dividends or interest the court⁹ may on application make a vesting order¹⁰ in favour of that other authority¹¹.

1 As to the meaning of 'securities' see PARA 288 note 9; definition applied by the Local Government Act 1972 s 146(2) (added by the Financial Services Act 1986 s 212(2), Sch 16 para 8(b)).

2 For these purposes, 'company' includes the Bank of England and any company or person keeping books in which any securities are registered or inscribed: Local Government Act 1972 s 146(2).

3 For these purposes, 'local authority' means a local authority within the meaning of the Local Government Act 1933, the London Government Act 1963 or the Local Government Act 1972, or a joint board on which, or a joint committee on which, a local authority or parish meeting is represented, a burial board, a joint burial board or the parish trustees of a parish: s 146(2); Interpretation Act 1978 s 17(2)(a). As to the meaning of 'local authority' generally see PARA 23. As to parish meetings and parish trustees see PARA 34. As to burial boards see **CREMATION AND BURIAL**.

4 As to the change of name of local authorities see PARAS 26, 39.

5 As to the proper officer see PARA 431.

6 Local Government Act 1972 s 146(1)(a).

7 As to the meaning of 'enactment' see PARA 12 note 1.

8 Local Government Act 1972 s 146(1)(b), (2A) (s 146(2A) added by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 33).

9 I.e. the High Court or, where the county court would have had jurisdiction had the application been made under the Trustee Act 1925, that court: Local Government Act 1972 s 146(3). As to applications under the Trustee Act 1925 see **TRUSTS**.

10 The Trustee Act 1925 applies in like manner as if the vesting order were made under s 51 (see **TRUSTS** vol 48 (2007 Reissue) PARA 884): Local Government Act 1972 s 146(1)(c).

11 Local Government Act 1972 s 146(1)(c).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/609. Administrative functions of former quarter sessions and clerks of the peace.

609. Administrative functions of former quarter sessions and clerks of the peace.

Many, but not all, of the administrative functions of justices in quarter sessions were transferred to county or county borough councils by the Local Government Act 1888¹, and the Local Government Act 1933 transferred certain administrative functions of clerks of the peace to the clerks of county councils². The remainder of these functions were transferred on the reorganisation of the courts system in 1971, when, without prejudice to those earlier transfers³, there were transferred to the local authorities⁴ for the appropriate areas any functions of courts of quarter sessions, or of committees of quarter sessions, which related: (1) to the deposit of plans or documents, other than those relating to judicial business⁵; (2) to the keeping of records other than those relating to judicial business⁶; or (3) to any other matter which is not of a judicial nature⁷. Any functions of clerks of the peace or deputy clerks of the peace relating to any of those matters were transferred to the proper officers of the local authorities for the areas to which those matters related⁸.

1 See the Local Government Act 1888 ss 3, 31 (repealed).

2 See the Local Government Act 1933 s 101 (repealed).

3 Courts Act 1971 s 56(1), Sch 8 para 1(3).

4 For these purposes, 'local authority' includes a county council, the Council of the Isles of Scilly, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple: see the Courts Act 1971 Sch 8 para 1(4), (5). As to the Council of the Isles of Scilly see PARA 36. As to local government in London see PARA 35; and **LONDON GOVERNMENT**. As to the meaning of 'local authority' generally see PARA 23.

5 Courts Act 1971 Sch 8 para 1(1)(a).

6 Courts Act 1971 Sch 8 para 1(1)(b).

7 Courts Act 1971 Sch 8 para 1(1)(c).

8 See the Courts Act 1971 Sch 8 para 1(2); and the Local Government Act 1972 s 251(1), Sch 29 para 4(1). In the case of the Temples, the proper officer is the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple: Courts Act 1971 Sch 8 para 1(5).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/610. Execution of works outside authority's area.

610. Execution of works outside authority's area.

Any power to execute works which is conferred on a local authority¹ by any enactment² may, unless the contrary intention appears in that or any other enactment, be exercised outside as well as inside the area of the authority³.

1 As to the meaning of 'local authority' see PARA 23.

2 As to the meaning of 'enactment' see PARA 12 note 1. References in the Local Government (Miscellaneous Provisions) Act 1976 s 32 to any enactment are references to it as amended by or under any other enactment: s 44(6).

3 Local Government (Miscellaneous Provisions) Act 1976 s 32.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/611. Grants to voluntary organisations.

611. Grants to voluntary organisations.

In relation to Greater London and metropolitan counties, a scheme may be made under which councils contribute in proportion to the populations of their respective areas to the expenditure incurred in making grants to voluntary organisations¹.

Certain local authorities² may make contributions to any organisation whose activities are carried on otherwise than for profit and consist of or include the promotion of safety in the home³.

1 See the Local Government Act 1985 s 48 (amended by the Local Government Finance Act 1992 s 105; and the Statute Law (Repeals) Act 2004).

2 For these purposes, 'local authority' means the council of a district or, in relation to Wales, a county or county borough: Home Safety Act 1961 s 1(4) (amended by the London Government Act 1963 ss 83(1), 93(1), Sch 17 para 29, Sch 18 Pt II; and by virtue of the Local Government Act 1972 s 179(1), (3); and the Local Government (Wales) Act 1994 s 17). As to the meaning of 'local authority' generally see PARA 23.

3 Home Safety Act 1961 s 1(2). As to the promotion of safety in the home by publishing or making arrangements for otherwise giving information or advice relating to the prevention of accidents in the home see s 1(1).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/612. Use of spare capacity of computers.

612. Use of spare capacity of computers.

If a local authority¹ has provided a computer² for the purpose of enabling the authority to perform any³ of its functions⁴, and considers that the computer can, without detriment to its use for that purpose, be used for the benefit of the authority⁵ if the authority enters into agreements with other persons for the provision by the authority of facilities for using the computer or of services provided by means of the computer, the authority may enter into such agreements⁶. An agreement so made must contain such terms as to payment or otherwise as the parties consider appropriate; and, in settling the terms, the local authority must ensure that they are terms on which it considers that a person other than a local authority could reasonably be expected to provide the facilities or services in question⁷.

1 As to the meaning of 'local authority' see PARA 23.

2 For these purposes, 'computer' means any device for storing and processing information: Local Government (Miscellaneous Provisions) Act 1976 s 38(3).

3 ie any of its functions other than functions under the Local Government (Miscellaneous Provisions) Act 1976 s 38: s 38(1)(a).

4 Local Government (Miscellaneous Provisions) Act 1976 s 38(1)(a). 'Functions' includes powers and duties: s 44(1).

5 Local Government (Miscellaneous Provisions) Act 1976 s 38(1)(b).

6 Local Government (Miscellaneous Provisions) Act 1976 s 38(1).

7 Local Government (Miscellaneous Provisions) Act 1976 s 38(2).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/613. Public clocks, seats etc.

613. Public clocks, seats etc.

A local authority¹ may: (1) from time to time provide such clocks as it considers necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for the purpose²; (2) cause the dials of such clocks to be lighted at night³; (3) from time to time alter and remove any such clocks to such other like situation as it may consider expedient⁴; and (4) pay the reasonable cost of repairing, maintaining, winding up and lighting any public clock within its district even though the clock is not vested in it⁵. A parish or community council may provide, maintain and light such public clocks within the parish or community as it considers necessary and, subject to obtaining appropriate consents⁶, may cause them to be installed on

or against any premises or in any other place the situation of which may be convenient⁷. A faculty is, however, necessary before a clock may be fixed on or removed from a church tower or other consecrated ecclesiastical building⁸.

A local authority and any person with its consent and subject to such conditions as it may impose may, in proper and convenient situations in any street⁹ or public place, erect and maintain seats and drinking fountains for the use of the public¹⁰. A local authority may also place, or authorise any person to place, chairs or seats in any public park or pleasure ground provided by it or under its management and control¹¹. A local authority has power to provide and maintain bus shelters¹² and litter bins¹³, and may authorise the erection of statues and monuments¹⁴. On obtaining any necessary consent¹⁵, a parish or community council may provide and maintain seats and shelters for the use of the public and cause them to be installed or erected in proper and convenient situations in, or on any land abutting on, any road¹⁶ within the parish or community¹⁷.

1 For the purposes of the Public Health Acts 1875 to 1925, 'local authority' generally means district councils, London borough councils, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple and, in relation to Wales, county councils and county borough councils: see the Local Government Act 1972 s 180(1), Sch 14 para 2 (s 180(1) amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 35). As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Public Health Acts 1875 to 1925 see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 2.

2 Public Health Act 1875 s 165. In a case where the clock overhangs a highway, the consent of the highway authority must be obtained in respect of a clock provided by a district council or, where it is not the highway authority, by a county council or county borough council in Wales: see the Local Government Act 1972 Sch 14 para 28(a) (Sch 14 para 28 amended by the Local Government (Wales) Act 1994 Sch 15 para 63). As to highways authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 49-69.

3 Public Health Act 1875 s 165.

4 Public Health Act 1875 s 165.

5 Public Health Acts Amendment Act 1890 s 46.

6 As to the necessary consents see the Parish Councils Act 1957 s 5; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 542.

7 Parish Councils Act 1957 s 2 (amended by virtue of the Local Government Act 1972 s 179(1), (4)). A parish or community council may contribute towards: (1) the reasonable expenses incurred by any person in doing anything which, by virtue of the Parish Councils Act 1957 ss 1-5, the council has power to do (s 6(1)(a)); and (2) the expenses incurred by any other such council in exercising its powers under those provisions (s 6(1)(b)). As to the power of a parish or community council to maintain anything which might have been provided under those provisions see s 6(2); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 541. As to the power of a parish or community council to light roads and public places see s 3; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 541.

8 As to faculties see **ECCLESIASTICAL LAW** vol 14 PARA 1306 et seq.

9 'Street' includes any highway, any public bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: Public Health Act 1875 s 4 (definition applied by the Public Health Act 1925 s 1(3)).

10 See the Public Health Act 1925 s 14; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 560. This power also extends to erecting and maintaining troughs for watering horses or cattle: see s 14. A district council or, where it is not the highway authority, a county council or county borough council in Wales may not exercise this power in relation to a highway without the consent of the highway authority: see the Local Government Act 1972 Sch 14 para 28(b) (as amended: see note 2).

11 See the Public Health Acts Amendment Act 1907 s 76(1)(f); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 559. The local authority may charge or authorise any person to charge for the use of the chairs provided: see s 76(1)(f).

12 See the Local Government (Miscellaneous Provisions) Act 1953 ss 4-7; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 561-564. As to the consents required see s 5; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 562. As to the regulation of the conduct of persons waiting for public vehicles see the Public Health Act 1925 s 75 (amended by the Local Government Act 1972 s 272(1), Sch 30). As to the power to provide and maintain shelters for cab drivers see the Public Health Acts Amendment Act 1890 s 40; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 565. A district council or, where it is not the highway authority, a county council or county borough council in Wales may not exercise the powers under the Public Health Act 1925 s 75 or under the Public Health Acts Amendment Act 1890 s 40 in relation to a highway without the consent of the highway authority: see the Local Government Act 1972 Sch 14 para 28(b) (as amended: see note 2).

13 See the Highways Act 1980 s 185; the Litter Act 1983 s 5; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 719; **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 567-568.

14 See the Public Health Acts Amendment Act 1890 s 42; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 566. A district council or, where it is not the highway authority, a county council or county borough council in Wales may not exercise this power in relation to a highway without the consent of the highway authority: see the Local Government Act 1972 Sch 14 para 28(b) (as amended: see note 2). As to the maintenance and repair of war memorials see PARA 614.

15 See note 6.

16 'Road' means any highway (including a public path) and any other road, lane, footway, square, court, alley or passage (whether a thoroughfare or not) to which the public has access, but does not include a special road as defined by the Special Roads Act 1949 (repealed: see now the Highways Act 1980; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 731 et seq); Parish Councils Act 1957 s 7.

17 Parish Councils Act 1957 s 1(1) (amended by virtue of the Local Government Act 1972 s 179(1), (4)).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/614. War memorials.

614. War memorials.

A local authority¹ may incur reasonable expenditure in the maintenance, repair and protection of any war memorial within its district, whether vested in it or not², and may alter any memorial so as to make it serve as a memorial in connection with any war subsequent to that for which it was erected and correct any error or omission in the inscription on it³. These powers do not apply to any war memorial provided or maintained by a local authority in the exercise of any other statutory power⁴.

1 For these purposes, 'local authority' means the council of a county, county borough, district, London borough, parish or community, and the parish meeting of a parish having no parish council: see the War Memorials (Local Authorities' Powers) Act 1923 s 4 (amended by the Statute Law (Repeals) Act 1976; and by virtue of the London Government Act 1963 ss 1, 4; the Local Government Act 1972 s 179(1), (3), (4); and the Local Government (Wales) Act 1994 s 17). As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 War Memorials (Local Authorities' Powers) Act 1923 s 1 (amended by the Local Government Act 1948 s 133(1)).

3 See the Local Government Act 1948 s 133(2).

4 War Memorials (Local Authorities' Powers) Act 1923 s 3.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/615. Garages.

615. Garages.

A local authority¹ may within its area provide off street accommodation for the keeping of motor vehicles, and may for that purpose erect² garages, construct hard standings or convert buildings into garages³. Any such garage or hard standing for motor vehicles may be either one having accommodation for a single vehicle only or one having accommodation for several vehicles, and the local authority may let any such garage or hard standing having accommodation for a single vehicle only or any space in any such garage or hard standing having accommodation for several vehicles, for such period and consideration and subject to such terms and conditions as it thinks fit, to any person for the purpose of the accommodation of a motor vehicle⁴. The local authority may manage, repair, maintain and insure any such garage or hard standing⁵. Nothing in these provisions authorises a local authority: (1) to carry on the storage or sale of fuel or lubricants; (2) to carry on the sale of motor vehicles or accessories, spare parts or equipment for motor vehicles; (3) to carry on the business of maintaining or repairing motor vehicles; or (4) to provide facilities or apparatus for any of those activities⁶.

1 As to the meaning of 'local authority' see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 As to the meaning of 'erect' see PARA 521 note 3.

3 Local Authorities (Land) Act 1963 s 5(1). As to the provision of parking places for vehicles generally see the Road Traffic Regulation Act 1984 Pt IV (ss 32-63A); and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 784 et seq. No provision in the Local Authorities (Land) Act 1963 s 5 is to be construed as authorising on the part of a local authority any act or omission which, apart from that provision, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the local authority by virtue of its constitution: s 12(1).

4 Local Authorities (Land) Act 1963 s 5(2).

5 Local Authorities (Land) Act 1963 s 5(3).

6 Local Authorities (Land) Act 1963 s 5(4).

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/616. Survey of local authority boundaries.

616. Survey of local authority boundaries.

For the purpose of enabling the Ordnance Survey¹ to make and complete surveys and maps marking the boundaries of counties² and other local government areas in England, the county council or district council or, in Wales, the principal council³ must, on the application in writing of any officer appointed by the Ordnance Survey⁴, appoint a person to assist the officer appointed by the Ordnance Survey in examining, ascertaining and marking out reputed boundaries⁵.

1 The Ordnance Survey Act 1841 refers to the Master General and Board of Ordnance, whose functions devolved to the Secretary of State (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519) and are now exercised by the Ordnance Survey. As to the Ordnance Survey see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1110 et seq.

2 References in the Ordnance Survey Act 1841 to a county include references to any preserved county or local government area within the meaning of the Local Government Act 1972: see s 191(1), (5) (s 191(5) amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 39; and the Statute Law (Repeals) Act 2004). As to the meaning of 'preserved county' see PARA 1 note 1. As to the meaning of 'local government area' see PARA 22. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

3 See the Local Government Act 1972 s 191(1), (4) (s 191(4) amended by the Local Government (Wales) Act 1994 Sch 15 para 39). As to the meaning of 'principal council' see PARA 23.

4 An application must be sent to the proper officer of a county council or a district council or, in Wales, a principal council: see the Local Government Act 1972 s 191(1), (2) (s 191(2) amended by the Local Government (Wales) Act 1994 Sch 15 para 39). As to the proper officer see PARA 431.

5 See the Ordnance Survey Act 1841 s 1; the Local Government Act 1972 s 191(1), (2) (as amended: see note 4); and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1112. The person appointed to assist the officer of the Ordnance Survey must act under that officer's direction: see the Ordnance Survey Act 1841 s 1; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1112.

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579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/617. Dangerous trees and high hedges.

617. Dangerous trees and high hedges.

Where a district council, a London borough council, the Common Council of the City of London or, in Wales, a county or county borough council¹: (1) receives a notice from a person appearing to it to be an owner² or occupier of any land³ in its area on which a tree is situated, requesting it to make the tree safe⁴; and (2) considers that the tree is in such a condition that there is

imminent danger of its causing damage to persons or property⁵, the council may take such steps on the land, whether by felling the tree or otherwise, as it thinks appropriate for the purpose of making the tree safe, and may recover the expenses reasonably incurred in so doing from the person who gave the notice⁶.

A council has similar powers where: (a) it receives a notice from a person appearing to the council to be an owner or occupier of land, requesting it to make safe a tree on other land which is in its area and which appears to the council to be not owned or occupied by that person⁷; (b) it considers that the tree is in such a condition that it is likely to cause damage to persons or property on the first-mentioned land⁸; and (c) it knows the name and address of no person appearing to the council to be an owner or occupier of the land on which the tree is situated⁹ and either has made reasonable but unsuccessful inquiries to ascertain the name and address of an owner or occupier¹⁰ or considers the danger so imminent that the delay in making inquiries would be unwarranted¹¹. In these circumstances it may recover the expenses from any person who was, when the council took steps to make the tree safe, an owner or occupier of the land on which the tree is situated¹². If, however, the council receives such a notice from a person appearing to the council to be an owner or occupier of land¹³ and considers that the tree is in such condition that it is likely to cause damage to persons or property on that land¹⁴, but does know the name and address of a person appearing to the council to be an owner or occupier of the land on which the tree is situated¹⁵, it may serve on him a notice requiring him to take specified steps to make the tree safe¹⁶. That person, and any other person who is an owner or occupier of the land, may appeal to the county court against the notice¹⁷. If a person served with such a notice fails to comply with it, the council may take the steps specified in the notice and recover from him the reasonable expenses incurred in doing so¹⁸.

A person authorised in writing in that behalf by the council may enter on any land¹⁹ for the purpose of: (i) determining whether the council should take steps²⁰ or serve a notice²¹ in respect of a tree on the land²²; or (ii) exercising on behalf of the council a power conferred on it²³ in respect of a tree on the land²⁴. Anyone who wilfully obstructs another in the exercise of a power conferred by these provisions²⁵ is guilty of an offence and liable on summary conviction to a fine²⁶.

A person interested in land who suffers damage by reason of the exercise of a power conferred by these provisions²⁷ or a failure to secure the land against trespassers²⁸ is entitled to recover compensation for the damage from the council which authorised the entry²⁹.

A relevant local authority³⁰ also has powers³¹ to deal with complaints made by an owner or occupier of a domestic property alleging that his reasonable enjoyment of that property is being adversely affected by the height of a high hedge situated on land owned or occupied by another person³².

1 As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

2 As to the meaning of 'owner' see PARA 532 note 12.

3 As to the meaning of 'land' see PARA 509 note 4.

4 Local Government (Miscellaneous Provisions) Act 1976 s 23(1)(a) (s 23(1) amended by SI 1996/3071).

5 Local Government (Miscellaneous Provisions) Act 1976 s 23(1)(b) (as amended: see note 4).

6 Local Government (Miscellaneous Provisions) Act 1976 s 23(1) (as amended: see note 4). As to trees encroaching on neighbouring property and causing damage see also **NUISANCE** vol 78 (2010) PARA 118. As to abatement of a nuisance by a local authority see **NUISANCE** vol 78 (2010) PARA 200 et seq. As to trees overhanging a highway see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 347.

Where a council is entitled by virtue of the Local Government (Miscellaneous Provisions) Act 1976 s 23 to recover any expenses from a person, the council is also entitled to recover from him interest on the amount of the expenses or on such portion of it as is for the time being unpaid, at such reasonable rate as the council may

determine, from the date on which it served notice on him demanding payment of the expenses: Local Government (Miscellaneous Provisions) Act 1976 s 24(6) (amended by the Local Government, Planning and Land Act 1980 s 1(6), Sch 6 para 21).

7 Local Government (Miscellaneous Provisions) Act 1976 s 23(2)(a).

8 Local Government (Miscellaneous Provisions) Act 1976 s 23(2)(b).

9 Local Government (Miscellaneous Provisions) Act 1976 s 23(2)(c).

10 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(2)(c)(i).

11 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(2)(c)(ii).

12 Local Government (Miscellaneous Provisions) Act 1976 s 23(2). Where it appears that a tree on land in the council's area which is not owned or occupied by the council is in such a condition that it is likely to cause damage to persons or property on other land in that area which is owned or occupied by the council, the provisions of s 23(2) (except s 23(2)(b) (see the text and note 8)) or, as the case may require, s 23(3) (except s 23(3)(b) (see the text and note 14)) apply as if the other land were occupied by another person and he had duly given notice to the council in respect of the tree: s 23(4).

13 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(3)(a).

14 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(3)(b).

15 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(3)(c).

16 Local Government (Miscellaneous Provisions) Act 1976 s 23(3). The time for compliance is a reasonable period specified in the notice, being a period not expiring until at least 21 days after service of the notice: see s 23(3). See also note 12.

17 See the Local Government (Miscellaneous Provisions) Act 1976 s 23(5). A person served with the notice may appeal against the notice on one or more of the following grounds: (1) that he is neither an owner nor an occupier of the land on which the tree is situated (s 23(5)(a)); (2) that the tree is not in such condition as is mentioned in s 23(3)(b) (see the text and note 14) (s 23(5)(b)); (3) that less expensive steps than those specified in the notice would suffice for the purpose of making the tree safe (s 23(5)(c)); (4) that it would have been fairer to serve the notice on another person who is an owner or occupier of the land (s 23(5)(d)). Any other person who is an owner or occupier of the land to which the notice relates may appeal against the notice on one or both of the grounds mentioned in heads (2) and (3): see s 23(5). The appeal must be brought within 21 days beginning with the date of service of the notice: s 23(5). For the procedure on an appeal see ss 21(2)-(6), 23(6). See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 991.

18 Local Government (Miscellaneous Provisions) Act 1976 s 23(7).

19 He must, if so required before or after entering on the land, produce evidence of his authority to enter (Local Government (Miscellaneous Provisions) Act 1976 s 24(2)(a)), and may take with him such other persons and such equipment as are necessary for achieving the purpose for which he was authorised to enter on the land (s 24(2)(b)). If the land is unoccupied when he enters or the occupier is then temporarily absent, the person entering must leave the land as effectually secured against trespassers as he found it: s 24(2)(c).

20 He under the Local Government (Miscellaneous Provisions) Act 1976 s 23(2) (see the text and notes 7-12) or s 23(7) (see the text and note 18).

21 He under the Local Government (Miscellaneous Provisions) Act 1976 s 23(3) (see the text and notes 13-16).

22 Local Government (Miscellaneous Provisions) Act 1976 s 24(1)(a).

23 He under the Local Government (Miscellaneous Provisions) Act 1976 s 23(2) (see the text and notes 7-12) or s 23(7) (see the text and note 18).

24 Local Government (Miscellaneous Provisions) Act 1976 s 24(1)(b).

25 He if he wilfully obstructs another person in the exercise of a power conferred on that person by the Local Government (Miscellaneous Provisions) Act 1976 s 24(1) (see the text and notes 19-24) or s 24(2)(b) (see note 19) (s 24(3)(a)); or if, while another person is on land in pursuance of s 24(1) or s 24(2)(b), he wilfully obstructs that person in doing things connected with the purpose for which that person is authorised to be on the land (s 24(3)(b)).

26 Local Government (Miscellaneous Provisions) Act 1976 s 24(3). The penalty is a fine not exceeding level 3 on the standard scale: see the Local Government (Miscellaneous Provisions) Act 1976 s 24(3) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 105 note 7.

27 I.e. by reason of (1) the exercise of the power to enter on the land which is conferred by virtue of Local Government (Miscellaneous Provisions) Act 1976 s 24(1)(a) (see the text and note 22) (s 24(4)(a)); or (2) the exercise on the land, in connection with the exercise of the power mentioned in head (1), of the power conferred by s 24(2)(b) (see note 19) (s 24(4)(b)).

28 I.e. a failure to perform the duty imposed by the Local Government (Miscellaneous Provisions) Act 1976 s 24(2)(c) (see note 19) in respect of the land: s 24(4)(c).

29 Local Government (Miscellaneous Provisions) Act 1976 s 24(4). Any dispute as to a person's entitlement to compensation or as to the amount of the compensation is to be determined by the Upper Tribunal; and the Land Compensation Act 1961 s 4 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 716-717) are to apply with the necessary modifications in relation to the determination by the Upper Tribunal of such a dispute: Local Government (Miscellaneous Provisions) Act 1976 s 24(5) (amended by SI 2009/1307). As to the Upper Tribunal see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) para 13A.

30 I.e. the local authority in whose area the land is situated: see the Anti-social Behaviour Act 2003 s 65(5). For these purposes a local authority in relation to England, means (1) a district council; (2) a county council for a county in which there are no districts; (3) a London borough council; or (4) the Common Council of the City of London; and, in relation to Wales, means a county council or a county borough council: s 82. As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

31 Including the power to issue remedial notices (see the Anti-social Behaviour Act 2003 s 69; and **NUISANCE** vol 78 (2010) PARAS 132, 133) and to enter land (see the Anti-social Behaviour Act 2003 s 74; and **NUISANCE** vol 78 (2010) PARA 135).

32 See the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84); and **NUISANCE** vol 78 (2010) PARA 131.

UPDATE

579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/618. Relaxation of controls on the exercise of certain functions.

618. Relaxation of controls on the exercise of certain functions.

A number of controls which formerly affected the exercise by local authorities¹ of certain functions, including limits imposed on the amount of fees they might charge in connection with the issue of licences and the exercise of other functions, have been removed or relaxed by statute². Further, the Secretary of State or the Welsh Ministers³ may by order made by statutory instrument⁴ provide for the removal or relaxation of any control, including any such limit, which affects the exercise of any function by a local authority and which is conferred by or under any enactment on a Minister of the Crown or a body constituted by or under any enactment⁵.

1 For these purposes, 'local authority' means any local authority within the meaning of the Local Government Act 1972 (see PARA 23), the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple, the Council of the Isles of Scilly, a port health authority, the Transport for London and a passenger transport executive: Local Government Act 1974 s 35(6) (amended by SI 2003/1615). As to the meaning of 'local authority' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to the Council of the Isles of Scilly see PARA 36. As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010)

PARA 102 et seq. As to the Transport for London see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 66 et seq. As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247 et seq.

2 See the Local Government Act 1974 s 35(1), Sch 6. References in Sch 6 to any enactment include references to that enactment as applied by any other enactment, including a local Act: s 35(2).

3 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 A statutory instrument containing an order under the Local Government Act 1974 s 35(3) is of no effect unless approved by a resolution of each House of Parliament, or the National Assembly for Wales, as appropriate: s 35(5). An order may be revoked or varied by a further order, and may contain such incidental or consequential provisions as appear to the Secretary of State or the Welsh Ministers to be appropriate, including provisions amending, repealing or revoking, with or without savings, any enactment passed before the Local Government Act 1974 and any instrument made under any such enactment: s 35(4). At the date at which this volume states the law no such order had been made.

5 Local Government Act 1974 s 35(3).

UPDATE

579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/5. POWERS AND DUTIES OF LOCAL AUTHORITIES/(7) SPECIFIC POWERS, DUTIES AND FUNCTIONS/618A. Local authority economic assessments.

618A. Local authority economic assessments.

The following provisions are partly in force on 25 November 2009 and fully in force on 1 April 2010: SI 2009/3087, SI 2009/3318.

A principal local authority in England must prepare an assessment of the economic conditions of its area: Local Democracy, Economic Development and Construction Act 2009 s 69(1). In the Local Democracy, Economic Development and Construction Act 2009 Pt 4 (s 69) 'principal local authority' means (1) a county council; (2) a district council, other than a non-unitary district council; (3) a London borough council; (4) the Common Council of the City of London in its capacity as a local authority; (5) the Council of the Isles of Scilly: s 69(3). In s 69(3), 'non-unitary district council' means a district council for an area that is part of the area of a county council: s 69(8). A principal local authority may revise the assessment, or any part or aspect of it, at any time: s 69(2). In discharging its functions under s 69, a principal local authority must consult such persons as it considers appropriate: s 69(4). Where a principal local authority is a county council for an area for which there is a district council, the following duties also apply in relation to the discharge by the county council of its functions under s 69 (a) the county council must consult and seek the participation of the district council; (b) the county council must have regard to any material produced by the district council in the discharge of the district council's functions under the Planning and Compulsory Purchase Act 2004 s 13 (see **TOWN AND COUNTRY PLANNING**); (c) the district council must co-operate with the county council: Local Democracy, Economic Development and Construction Act 2009 s 69(5). A principal local authority must have regard to any guidance given by the Secretary of State (i) as to what an assessment under s 69 should contain and how it should be prepared; (ii) as to when to prepare an assessment under s 69(1); (iii) as to when to revise any assessment, or any part or aspect of an assessment, under s 69(2): s 69(6). Before giving guidance under s 69(6) the Secretary of State must consult (A) such representatives of local government as the Secretary of State considers

appropriate, and (B) such other persons (if any) as the Secretary of State considers appropriate: s 69(7).

UPDATE

579-618 Specific Powers, Duties and Functions

As to local authority economic assessments see PARA 618A.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/A. INTRODUCTION AND STANDING ORDERS/619. Introduction.

6. PROCEEDINGS AND DECISIONS

(1) MEETINGS

(i) Generally

A. INTRODUCTION AND STANDING ORDERS

619. Introduction.

A local authority may discharge its functions in council or executive meetings, by committees or sub-committees, joint committees or through individual members or officers¹. In addition to the provisions that are applicable to local authority meetings generally², there are provisions relating specifically to meetings of: (1) principal councils and joint authorities³; (2) parish or community councils⁴; and (3) parish and community meetings⁵. There are also provisions relating to admission of the public and press to meetings and access to documents of principal councils⁶, local authority executives⁷ and other bodies⁸.

1 As to the discharge of functions see PARA 369 et seq. As to executive arrangements see PARA 303 et seq; and as to the allocation of functions under executive arrangements see PARA 324 et seq. As to committees see PARA 371 et seq.

2 As to proceedings generally see PARA 620 et seq.

3 As to proceedings of principal councils and joint authorities see PARA 628 et seq.

4 As to proceedings of parish or community councils see PARA 631 et seq.

5 As to proceedings of parish and community meetings see PARA 635 et seq.

6 As to admission to meetings and access to documents of principal councils see PARA 661 et seq.

7 As to admission to meetings and access to documents of local authority executives see PARA 644 et seq.

8 As to admission to meetings and access to documents of other public bodies see PARA 641.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/A. INTRODUCTION AND STANDING ORDERS/620. Standing orders.

620. Standing orders.

A local authority and a joint local authority¹ may make standing orders for the regulation of proceedings and business and may vary or revoke any such orders². A local authority may also resolve to suspend its standing orders, and a person with a sufficient interest may apply to the court on an application for judicial review for an order requiring an authority to comply with its standing orders³.

The Secretary of State or the Welsh Ministers⁴ may by regulations require relevant authorities⁵, subject to such variations as may be authorised by the regulations: (1) to incorporate such provision as may be prescribed by the regulations in standing orders for regulating their proceedings and business⁶; and (2) to make or refrain from making such other modifications⁷ of the standing orders as may be so prescribed⁸.

Such regulations may⁹ require standing orders to contain provision which, notwithstanding any enactment or the decision of any relevant authority or committee or sub-committee of a relevant authority, authorises persons who are members of such an authority, committee or sub-committee¹⁰: (a) to requisition meetings of the authority or of any of its committees or sub-committees¹¹; (b) to require a decision of a committee or sub-committee of the authority to be referred to and reviewed by the authority itself or by a committee of the authority¹²; (c) to require that a vote¹³ with respect to a matter falling to be decided by the authority or by any of its committees or sub-committees is to be taken in a particular manner¹⁴.

1 As to the meaning of 'local authority' for these purposes see PARA 623 note 1; as to the meaning of 'local authority' generally see PARA 23; and as to joint local authorities see PARA 47.

2 Local Government Act 1972 s 99, Sch 12 para 42 (s 99 amended by the Local Government Act 1985 Sch 14 para 14). As to the requirement under the Local Government Act 2000 that standing orders are to be included in local authority constitutions see s 37; and PARA 306. As to standing orders with respect to contracts see PARA 492. The provisions of the Local Government Act 1972 Sch 12 para 42 apply in relation to a committee of a local authority, including a joint committee, or a sub-committee of any such committee as they apply in relation to a local authority: Sch 12 para 44(1). As to committees and sub-committees see PARA 371 et seq; and as to joint committees see PARA 380.

3 See *R v Hereford Corpn, ex p Harrower* [1970] 3 All ER 460, [1970] 1 WLR 1424, DC. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

4 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 For these purposes, 'relevant authority' in relation to England and Wales means a local authority of any of the descriptions specified in the Local Government and Housing Act 1989 s 21(1)(a)-(j) (see PARA 23) or any parish or community council: see s 20(4). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq.

6 Local Government and Housing Act 1989 s 20(1)(a). See note 8.

7 As to the meaning of 'modification' see PARA 122 note 19.

8 Local Government and Housing Act 1989 s 20(1)(b). Regulations under the Local Government and Housing Act 1989 s 20 may contain such incidental provision and such supplemental, consequential and transitional provision in connection with their other provisions as the Secretary of State considers appropriate: s 20(3). As to the regulations made see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202 (amended, in relation to England, by SI 2001/3384, and replaced, in relation to Wales (except in relation to a national park authority in Wales), by SI 2006/1275) (see PARAS 426, 620, 623, 625); the Police Authorities (Standing Orders) Regulations 1997, SI 1997/2416 (amended by SI 2000/1549); the National Crime Squad Service Authority Regulations 1998, SI 1998/1002; the Local Authorities (Standing Orders) (England) Regulations 2001, SI 2001/3384; and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275.

9 Ie without prejudice to the generality of the Local Government and Housing Act 1989 s 20(1): see the text and notes 4-8.

10 Local Government and Housing Act 1989 s 20(2).

- 11 Local Government and Housing Act 1989 s 20(2)(a).
- 12 Local Government and Housing Act 1989 s 20(2)(b).
- 13 As to decisions by vote at meetings see PARA 623.
- 14 Local Government and Housing Act 1989 s 20(2)(c).

UPDATE

620 Standing orders

NOTE 2--Local Government Act 1972 s 99 further amended: see PARAS 625-640.

NOTE 5--Definition of 'relevant authority' in Local Government and Housing Act 1989 s 20(4) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 81.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/B. LOCATION OF MEETINGS/621. Provision of offices and places for meetings.

B. LOCATION OF MEETINGS

621. Provision of offices and places for meetings.

A principal council¹ may acquire or provide and furnish halls, offices and other buildings, whether within or without the area of the authority, for use for public meetings and assemblies².

A parish or community council³ may acquire or provide and furnish buildings to be used for public meetings and assemblies or contribute towards the expenses incurred by any other parish or community council or any other person in acquiring or providing and furnishing such a building⁴.

1 As to the meaning of 'principal council' see PARA 23.

2 Local Government Act 1972 s 132. As to the acquisition of land for providing access to existing halls see *Loweth v Minister of Housing and Local Government, Loweth v Minister of Transport* (1970) 22 P & CR 125.

3 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

4 Local Government Act 1972 s 133. As to the acquisition of land by or on behalf of parish or community councils see PARA 516 et seq. As to the use of school premises see PARA 622.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/B. LOCATION OF MEETINGS/622. Use of room in school.

622. Use of room in school.

Where in a parish there is no suitable public room vested in the parish council¹ or the parish trustees², as the case may be, which can be used free of charge, a suitable room in the premises of a school maintained by the local education authority³ or a suitable room the expenditure of maintaining which is payable out of any rate may⁴ be used free of charge at all reasonable times and after reasonable notice for any of the following purposes⁵: (1) a parish meeting⁶ or any meeting of the parish council⁷, where there is one⁸; or (2) meetings convened by the chairman of the parish meeting or by the parish council, where there is one⁹; or (3) the administration of public funds within or for the purposes of the parish where those funds are administered by any committee or officer appointed by the parish council or parish meeting or by the county council or district council¹⁰.

Where in a community there is no suitable public room vested in the community council¹¹ which can be used free of charge or where there is no community council, a suitable room in premises of a school maintained by the local education authority or a suitable room the expenditure of maintaining which is payable out of any rate may¹² be used free of charge at all reasonable times and after reasonable notice for any of the following purposes¹³: (a) a community meeting¹⁴ or any meeting of the community council¹⁵, where there is one¹⁶; or (b) meetings convened by the community council, where there is one¹⁷; or (c) the administration of public funds within or for the purposes of the community where those funds are administered by any committee or officer appointed by the community council, where there is one, or by the principal council¹⁸.

However, nothing in these provisions authorises the use of a room used as part of a private dwelling¹⁹, or any interference with the hours during which a room in the premises of a school is used for educational purposes²⁰, or any interference with the hours during which a room is used for the purposes of the administration of justice or for the purposes of the police²¹.

Where, by reason of the use of a room for a meeting or for the administration of public funds²², any expense is incurred by persons having control of the room, or any damage is done to the room or the building of which it is part or to its appurtenances, or to the furniture of the room or any teaching aids, the expense or the cost of making good the damage is defrayed as an expense of the parish or community council or parish or community meeting²³.

1 As to parish councils see PARA 27 et seq.

2 As to the meaning of 'parish trustee' see PARA 34.

3 As to local education authorities see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 et seq.

4 Ie subject to the Local Government Act 1972 s 134(3): see the text to notes 19-21.

5 Local Government Act 1972 s 134(1). Where any question arises under s 134 as to what is reasonable or suitable it may be determined by the Secretary of State or the Welsh Ministers: s 134(5). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 As to the meaning of 'parish meeting' see PARA 34. As to proceedings of parish meetings see PARA 635 et seq.

7 As to proceedings of meetings of parish councils see PARA 631 et seq.

8 Local Government Act 1972 s 134(1)(a).

9 Local Government Act 1972 s 134(1)(b).

10 Local Government Act 1972 s 134(1)(c). As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to financial administration see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 624 et seq.

11 As to community councils see PARA 41 et seq.

12 Ie subject to the Local Government Act 1972 s 134(3): see the text and notes 19-21.

13 Local Government Act 1972 s 134(2).

14 As to the meaning of 'community meeting' see PARA 46. As to proceedings of community meetings see PARA 635 et seq.

15 As to proceedings of meetings of community councils see PARA 631 et seq.

16 Local Government Act 1972 s 134(2)(a).

17 Local Government Act 1972 s 134(2)(b).

18 Local Government Act 1972 s 134(2)(c) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 29). As to the meaning of 'principal council' see PARA 23.

19 Local Government Act 1972 s 134(3)(a).

20 Local Government Act 1972 s 134(3)(b).

21 Local Government Act 1972 s 134(3)(c).

22 See for any of the purposes mentioned in the Local Government Act 1972 s 134(1) or s 134(2): see the text and notes 1-18.

23 Local Government Act 1972 s 134(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/C. VOTING AND VALIDITY OF PROCEEDINGS/623. Decisions by vote at meetings.

C. VOTING AND VALIDITY OF PROCEEDINGS

623. Decisions by vote at meetings.

All questions coming or arising before a meeting of a local authority¹ are to be decided by a majority² of the members of the authority present and voting at the meeting³ of the authority⁴. In the event of an equality of votes, the person presiding at the meeting has a second or casting vote⁵.

The appropriate authority⁶ must make or modify standing orders⁷ relating to the recording of votes⁸.

1 The provisions of the Local Government Act 1972 s 99, Sch 12 have effect with respect to the meetings and proceedings of local authorities, joint authorities, police authorities established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq), the Metropolitan Police Authority, parish meetings and their committees and community meetings: Local Government Act 1972 s 99 (amended by the Local Government Act 1985 s 84, Sch 14, Pt I, para 14; the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 8; the Police Act 1996 s 103(1), Sch 7, Pt I, para 1; and the Greater London Authority Act 1999 s 325, Sch 27 para 26). As to the meaning of 'local authority' see PARA 23. As to joint authorities see PARA 47. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155 et seq.

2 But see petitions for borough status by charter (see PARAS 25, 38) and the creation of honorary aldermen or freemen (see PARA 108).

3 The word 'meeting' prima facie means the coming together of more than one person: *Sharp v Dawes* (1876) 2 QBD 26, CA.

4 Local Government Act 1972 Sch 12 para 39(1). The provisions of Sch 12 para 39 apply in relation to a committee of a local authority, including a joint committee, or a sub-committee of any such committee as they apply in relation to a local authority: Sch 12 para 44(1). As to committees and sub-committees see PARA 371 et seq; and as to joint committees see PARA 380.

Where a matter is not controversial, voting does not have to be by ballot or by a show of hands, it can be 'on the nod': *R v Highbury Corner Magistrates' Court, ex p Ewing* [1991] 3 All ER 192, sub nom *Ex p Ewing* [1991] 1 WLR 388, CA. As to restrictions on voting on account of pecuniary interests see PARA 286.

5 Local Government Act 1972 Sch 12 para 39(2). The person presiding is not required to exercise his casting vote, but if he does so he may vote in favour of the policy of the political party or group to which he belongs, as there is no implied requirement in Sch 12 para 39(2) that the casting vote be used impartially or to maintain the status quo in the event of a tied vote: see *R v Bradford City Metropolitan Council, ex p Corris* [1990] 2 QB 363, [1989] 3 All ER 156, CA; *R v Bradford City Metropolitan Council, ex p Wilson* [1990] 2 QB 375n, [1989] 3 All ER 140. See also *Nell v Longbottom* [1894] 1 QB 767; *Burdon v Barron* [1939] 2 All ER 525.

6 In relation to England the appropriate authority is a county or district council, the council of a London borough and the Council of the Isles of Scilly: see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, regs 1(1), 4(1) (amended, in relation to England, by SI 2001/3384, and replaced, in relation to Wales (except in relation to a national park authority in Wales), by SI 2006/1275). In relation to Wales the appropriate authority is a county council or county borough council: see the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, regs 2, 4. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36.

7 It is no later than the first ordinary meeting of the authority falling after the day on which the relevant regulations came into force: see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, regs 1(1), 4(1); and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, regs 2(1), 4(1).

8 See the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 4(1); and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 4(1). The standing orders must incorporate the provisions of the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 2 or the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 2, as appropriate, which specify that where immediately after a vote is taken at a meeting of a relevant body any member of that body so requires, there must be recorded in the minutes of the proceedings of that meeting whether that person cast his vote for the question or against the question, or whether he abstained from voting: see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 2 para 1(1); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 2 para 1(1). For the purposes of England, 'relevant body' means the authority, a committee or sub-committee of the authority or a relevant joint committee or sub-committee of such a committee: Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 2 para 1(2). For the purposes of Wales 'relevant body' means the relevant authority, a committee or sub-committee of the relevant authority or a relevant joining committee or sub-committee of such a committee: Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 2, para 1(2). 'Relevant joint committee' in relation to an authority means a joint committee on which the authority is represented: Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2); Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 1(2). As to the minutes of proceedings see PARA 625.

UPDATE

623 Decisions by vote at meetings

NOTE 1--Local Government Act 1972 s 99 further amended: see PARAS 625-640.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/C. VOTING AND VALIDITY OF PROCEEDINGS/624. Vacancy or defect in election or qualification.

624. Vacancy or defect in election or qualification.

The proceedings of a local authority¹ are not invalidated by any vacancy among its members² or by any defect in the election³ or qualification⁴ of any of its members⁵.

¹ As to the meaning of 'local authority' for these purposes see PARA 623 note 1; and as to the meaning of 'local authority' generally see PARA 23.

2 As to casual vacancies see PARA 140 et seq.

3 For these purposes, any reference in the Local Government Act 1972 s 99, Sch 12 para 43 to 'election' includes a reference to appointment in relation to a joint authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), and the Metropolitan Police Authority: see the Local Government Act 1972 Sch 12 para 46 (added by the Local Government Act 1985 s 84, Sch 14 para 35(3); and amended by the Education Reform Act 1988 s 237, Sch 13, Pt I; the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 15(4); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Greater London Authority Act 1999 s 325, Sch 27 para 36(1), (4); and the Criminal Justice and Police Act 2001 Sch 6 para 32(c), Sch 7, Pt 5(1)). As to joint authorities see PARA 47. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to the conduct of local government elections see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 204 et seq.

4 As to qualification see PARA 117.

5 Local Government Act 1972 Sch 12 para 43. The provisions of Sch 12 para 43 apply in relation to a committee of a local authority, including a joint committee, or a sub-committee of any such committee as they apply in relation to a local authority: Sch 12 para 44(1). As to committees and sub-committees see PARA 371 et seq; and as to joint committees see PARA 380.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(i) Generally/D. MINUTES AND RECORDS/625. Minutes and record of names.

D. MINUTES AND RECORDS

625. Minutes and record of names.

Minutes of the proceedings of a meeting of a local authority¹ must be drawn up and entered in a book kept for that purpose and must be signed at the same or next suitable meeting² of the authority by the person presiding at it³. Any minute purporting to be so signed is to be received in evidence without further proof⁴. However, the minutes of the proceedings of meetings of a local authority may be recorded on loose leaves consecutively numbered, the minutes of the proceedings of any meeting being signed, and each leaf comprising those minutes being initialled at the same or next suitable meeting of the authority by the person presiding at it, and any minute purporting to be so signed is to be received in evidence without further proof⁵. The names of the members present at a meeting of the local authority must be recorded⁶.

Until the contrary is proved, a meeting of a local authority a minute of whose proceedings has been made and signed is deemed to have been duly convened and held, and all the members present are deemed to have been duly qualified⁷.

The appropriate body⁸ must make standing orders⁹ relating to the signing of minutes¹⁰.

1 As to joint committees see PARA 380. As to the meaning of 'local authority' for these purposes see PARA 623 note 1; and as to the meaning of 'local authority' generally see PARA 23.

2 The next suitable meeting of a local authority is its next following meeting or, where standing orders made by the authority in accordance with regulations under the Local Government and Housing Act 1989 s 20 (see PARA 620) provide for another meeting of the authority to be regarded as suitable, either the next following meeting or that other meeting: Local Government Act 1972 s 99, Sch 12 para 41(4) (added by the Local Government and Housing Act 1989 s 194, Sch 11 para 30). As to standing orders see PARA 620. The provisions of the Local Government Act 1972 Sch 12 paras 39-43, except those of Sch 12 para 41(3) (see the text to note 7), apply in relation to a committee of a local authority, including a joint committee, or a sub-committee of any such committee as they apply in relation to a local authority: Sch 12 para 44(1). As to committees and sub-committees see PARA 371 et seq.

3 Local Government Act 1972 Sch 12 para 41(1) (Sch 12 para 41(1), (2) amended by the Local Government and Housing Act 1989 Sch 11 para 30). As to the inspection of certain local authority documents see PARA 665. As to the recording of key decisions under the Local Government Act 2000 see PARA 678 et seq.

4 Local Government Act 1972 Sch 12 para 41(1) (as amended: see note 3). Evidence is not admissible to show that some of the persons present and voting took a particular view of the resolution which they concurred in passing (*Re Audit (Local Authorities) Act 1927 and Re Magrath* [1934] 2 KB 415 at 434, CA) or to add words (*R v Pembridge Inhabitants* (1841) Car & M 157), but the minutes may be corrected if other business which was done is wholly omitted from the minutes (*Re Fireproof Doors Ltd* [1916] 2 Ch 142). As to authentication of documents see PARAS 574-575. As to voting see PARA 623.

5 Local Government Act 1972 Sch 12 para 41(2) (as amended: see note 3).

6 Local Government Act 1972 Sch 12 para 40.

7 Local Government Act 1972 Sch 12 para 41(3). Until the contrary is proved, where a minute of any meeting of a committee or sub-committee has been made and signed in accordance with Sch 12 para 41 as applied by Sch 12 para 44 (see note 2), the committee or sub-committee is deemed to have been duly constituted and to have had power to deal with the matters referred to in the minute, the meeting is deemed to have been duly convened and held and the members present at the meeting are deemed to have been duly qualified: Sch 12 para 44(2).

8 In relation to England the appropriate authority is a county or district council, the council of a London borough and the Council of the Isles of Scilly: see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, regs 1(1), 4(1) (amended, in relation to England, by SI 2001/3384, and replaced, in relation to Wales (except in relation to a National Park Authority in Wales), by SI 2006/1275). In relation to Wales the appropriate authority is a county council or county borough council: see the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, regs 2, 4. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**. As to the Council of the Isles of Scilly see PARA 36.

9 In relation to England no later than the first ordinary meeting of the authority falling after 1 April 1993 (see the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, regs 1(1), 4(1)) and in relation to Wales, no later than the first ordinary meeting of the relevant authority falling after 3 July 2006 (see the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 4(1)).

10 See the Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 4(1), (2)(b); and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, reg 4(1), (2)(b). The standing orders must incorporate the provisions of reg 4, Sch 2 para 2. These provisions specify that where in relation to any meeting of the authority the next such meeting is a meeting called under the Local Government Act 1972 Sch 12 para 3 (see PARA 629), the next following meeting of the authority, being a meeting called otherwise than as an extraordinary meeting under Sch 12 para 3, is treated as a suitable meeting for the purposes of Sch 12 para 41(1), (2) (see the text and notes 1-5): Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, Sch 2 para 2; and the Local Authorities (Standing Orders) (Wales) Regulations 2006, SI 2006/1275, Sch 2 para 2.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(ii) Meetings of the Executive/626. Meetings of the executive.

(ii) Meetings of the Executive

626. Meetings of the executive.

The local authority executive¹ may, subject to regulations, hold meetings that are open to the public or in private².

1 As to the meaning of 'local authority' see PARA 23. As to executive arrangements see PARA 303 et seq.

2 See the Local Government Act 2000 s 22(1), (2); and PARA 644.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(iii) Meetings of the Authority/627. Place of council meetings and procedure for calling council meetings.

(iii) Meetings of the Authority

627. Place of council meetings and procedure for calling council meetings.

Meetings of a principal council¹ are held at such place, either within or without its area, as the council may direct². Three clear days³ at least before a meeting of a principal council: (1) notice of the time and place of the meeting must be published at the council's offices, and where the meeting is called by members of the council the notice must be signed by those members and must specify the business proposed to be transacted at it⁴; (2) a summons to attend the meeting, specifying the business proposed to be transacted at it, and signed by the proper officer⁵ of the council, must be left at or sent by post to the usual place of residence⁶ of every member of the council⁷.

Want of service of a summons on any member of a principal council does not affect the validity of the meeting of the council⁸. If a meeting is adjourned in order to complete unfinished business, no new business may be transacted at the adjourned meeting unless notice of it has been given in the summons for the adjourned meeting⁹.

1 As to the meaning of 'principal council' see PARA 23. As to the application of the Local Government Act 1972 s 99, Sch 12, Pt I (paras 1-6) to joint authorities and police authorities see PARA 628 note 1. As to annual meetings of principal councils see PARA 628; and as to other meetings of principal councils see PARA 629.

2 Local Government Act 1972 Sch 12 para 4(1). As to premises see PARA 621 et seq.

3 The period of three clear days is exclusive of the day of the notice and of the meeting: see *R v Herefordshire Justices* (1820) 3 B & Ald 581. See also *R v Swansea City Council, ex p Elitestone Ltd* (1993) 66 P & CR 422. As to the calculation of time limits generally see **TIME**.

The Secretary of State or the Welsh Ministers may by order amend Local Government Act 1972 Sch 12 para 4(2) so as to substitute for the reference to three clear days such greater number of days as may be specified in the order: Sch 12 para 4A(1) (Sch 12 para 4A added by the Local Government Act 2000 s 98(2)). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

4 Local Government Act 1972 Sch 12 para 4(2)(a). No business is to be transacted at a meeting of the council other than that specified in the summons, except in the case of: (1) business required by or under the Local Government Act 1972 or any other Act to be transacted at the annual meeting of a principal council; or (2) other business brought before the annual meeting of a principal council as a matter of urgency in accordance with the council's standing orders: Sch 12 para 4(5). As to standing orders see PARA 620.

5 As to the proper officer see PARA 431.

6 However, if a member of a principal council gives notice in writing to the proper officer of the council that he desires summonses to attend meetings of the council to be sent to him at some address specified in the notice other than his usual place of residence, any summons addressed to him and left at or sent by post to that address is deemed sufficient service of the summons: Local Government Act 1972 Sch 12 para 4(3).

7 Local Government Act 1972 Sch 12 para 4(2)(b).

8 Local Government Act 1972 Sch 12 para 4(4).

9 See *R v Grimshaw* (1847) 10 QB 747.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(iii) Meetings of the Authority/628. Annual meetings.

628. Annual meetings.

Each year a principal council¹ must hold an annual meeting². The annual meeting of a principal council must be held³: (1) in a year of ordinary elections of councillors to the council⁴, on the eighth day after the day of retirement of councillors⁵ or such other day within the 21 days immediately following the day of retirement as the council may fix⁶; (2) in any other year, on such day in the month of March, April or May as the council may fix⁷; and (3) until a day to be appointed, in a year of an election for the return of an elected mayor to the council, which is not a year of ordinary elections of councillors to the council, on the eighth day after the day of retirement of an elected mayor or such other day within the 21 days immediately following the day of retirement as the council may fix⁸. An annual meeting must be held at such hour as the council may fix or, if no hour is fixed, at 12 noon⁹.

A relevant authority¹⁰ must review the representation of different political groups on that body¹¹ and must do so at the time of the annual meeting or as soon as practicable after that meeting¹².

1 As to the meaning of 'principal council' see PARA 23. The Local Government Act 1972 s 99, Sch 12, Pt I (paras 1-6) also applies to a joint authority, a police authority established under Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), and the Metropolitan Police Authority: see the Local Government Act 1972 Sch 12 paras 6A(1), 6B (Sch 12 paras 6A, 6B added by the Local Government Act 1985 s 84, Sch 14 para 35(2); and amended by the Criminal Justice and Police Act 2001 Sch 6 para 32(b)(i), Sch 7, Pt 5(1); and the Local Government Act 1972 Sch 12 para 6A(1) substituted by the Local Government Act 1986 s 10(3); and amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 15(2); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Greater London Authority Act 1999 s 325, Sch 27 para 36(1), (2); and the Criminal Justice and Police Act 2001 Sch 6 para 32(a), Sch 7, Pt 5(1)). As to joint committees see PARA 380. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155.

2 Local Government Act 1972 Sch 12 para 1(1). As to other meetings of principal councils see PARA 629. As to the procedure for calling council meetings see PARA 627.

3 Local Government Act 1972 Sch 12 para 1(2) (amended by the Local Government Act 1985 s 102(2), Sch 17).

4 As to local government elections see PARAS 126-139; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

5 As to the day of retirement see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 204 et seq.

6 Local Government Act 1972 Sch 12 para 1(2)(a).

7 Local Government Act 1972 Sch 12 para 1(2)(b). However, in the case of a joint authority or a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 316), or the Metropolitan Police Authority the annual meeting of the authority must be held on such day between 1 March and 30 June, both inclusive, as the authority may fix: Local Government Act 1972 Sch 12 para 6A(1) (as added, substituted and amended: see note 1).

8 Local Government Act 1972 Sch 12 para 1(2)(aa) (added by SI 2002/1057; and prospectively repealed by the Local Government and Public Involvement in Health Act 2007 Sch 18, Pt 3).

9 Local Government Act 1972 Sch 12 para 1(4).

10 As to the meaning of 'relevant authority' see PARA 375 note 1.

11 As to political balance see PARAS 375-377.

12 See the Local Government and Housing Act 1989 s 15(1); and PARA 375.

UPDATE

628 Annual meetings

NOTE 1--Local Government Act 1972 Sch 12 para 6A(1) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 39.

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629. Other meetings.

A principal council¹ may in every year hold, in addition to the annual meeting², such other meetings as it may determine³. Those other meetings are held at such hour and on such days as the council may determine⁴.

An extraordinary meeting of a principal council may be called at any time by the chairman of the council⁵. If the chairman refuses to call an extraordinary meeting of a principal council after a requisition for that purpose signed by five members of the council has been presented to him, or if without so refusing the chairman does not call an extraordinary meeting within seven days after the requisition has been presented to him, then any five members⁶ of the council on that refusal or on the expiration of those seven days, as the case may be, may forthwith call an extraordinary meeting of the council⁷.

1 As to the meaning of 'principal council' see PARA 23. As to the application of the Local Government Act 1972 s 99, Sch 12, Pt I (paras 1-6) to joint authorities and police authorities see PARA 628 note 1.

2 As to annual meetings of principal councils see PARA 628.

3 Local Government Act 1972 Sch 12 para 2(1).

4 Local Government Act 1972 Sch 12 para 2(2). As to the procedure for calling council meetings see PARA 627.

5 Local Government Act 1972 Sch 12 para 3(1). As to the chairman see PARA 630.

6 However, in the case of joint authorities the number of members is three: Local Government Act 1972 Sch 12 para 6B(a) (added by the Local Government Act 1985 s 84, Sch 14 para 35(2); and renumbered by the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 15(3)).

7 Local Government Act 1972 Sch 12 para 3(2) (amended by the Local Government Act 1985 s 102, Sch 17). It seems that the requirement is for a meeting to be called within seven days, not for a meeting to be held within seven days: *Mallon v Armstrong* [1982] NI 112, CA.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(iii) Meetings of the Authority/630. Chairmanship and conduct of business.

630. Chairmanship and conduct of business.

At a meeting of a principal council¹ the chairman, if present, must preside². If the chairman is absent from a meeting of a principal council³, then: (1) the vice-chairman, if present, must

preside⁴; (2) in the case of a London borough council⁵, the deputy mayor, if at that time he remains a councillor and is chosen for that purpose by the members of the council then present, must preside⁶. Where in the case of a principal council both the chairman and vice-chairman of the council are absent from a meeting of the council, another member⁷ of the council chosen by the members of the council present must preside⁸. Where in the case of a London borough council, the mayor and deputy mayor are absent or the deputy mayor being present is not chosen, another member of the council chosen by the members of the council present must preside⁹.

No business may be transacted at a meeting of a principal council¹⁰ unless at least one-quarter of the whole number of members of the council is present¹¹. However, where more than one-third of the members of a principal council become disqualified¹² at the same time, then, until the number of members in office is increased to not less than two-thirds of the whole number of members of the authority, the quorum of the authority is to be determined by reference to the number of members of the authority remaining qualified instead of by reference to the whole number of members of the authority¹³. The quorum of committees or sub-committees¹⁴ or joint committees¹⁵ may be regulated by standing order¹⁶.

1 As to the meaning of 'principal council' see PARA 23. As to the application of the Local Government Act 1972 s 99, Sch 12, Pt I (paras 1-6) to joint authorities and police authorities see PARA 628 note 1. As to annual meetings of principal councils see PARA 628; and as to other meetings of principal councils see PARA 629.

2 Local Government Act 1972 Sch 12 para 5(1). As to casting votes of chairmen see PARA 623. The chairman is not liable to an action for ruling a motion out of order unless he is guilty of malice: *Breay v Browne* (1896) 41 Sol Jo 159, DC. However, in the event of his refusing to put a resolution to the meeting, an action will lie for an injunction to restrain his refusal and for a mandatory order to hold a meeting to which the resolution is to be put: *Pender v Lushington* (1877) 6 Ch D 70. As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

3 Local Government Act 1972 Sch 12 para 5(2). In the case of a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), or the Metropolitan Police Authority the Local Government Act 1972 Sch 12 paras 5(2) and 5(3) do not apply; and if the chairman is absent from a meeting of such an authority, the following person must preside: (1) in a case in which only one vice-chairman is present at the meeting, that vice-chairman; (2) in a case in which more than one vice-chairman is present at the meeting, the vice-chairman chosen by the members present; and (3) in any other case the member chosen by the members present: Sch 12 para 6B(b) (added by the Local Government Act 1985 s 84, Sch 14 para 35(2); and substituted by the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 15(3); and amended by the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 10(3); the Greater London Authority Act 1999 s 325, Sch 27 para 36(1), (3); the Education Reform Act 1988, s 237, Sch 13, Pt 1; and the Criminal Justice and Police Act 2001 ss 128(1), 137, Sch 6, Pt 2, paras 22, 32(b)(i), 32(b)(ii), Sch 7, Pt 5(1)). As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155.

4 Local Government Act 1972 Sch 12 para 5(2)(a) (amended by the Local Government Act 1985 s 102, Sch 17).

5 As to local authorities in London see PARA 35; and **LONDON GOVERNMENT**.

6 Local Government Act 1972 Sch 12 para 5(2)(c) (amended by SI 1977/1710). The Local Government Act 1972 Sch 12 para 5(2)(c) does not apply where a London borough council is operating executive arrangements which involve a mayor and cabinet executive: Sch 12 para 5(5) (Sch 12 para 5(5) added by the Local Government Act 2000 s 46, Sch 3 para 14; and amended by the Local Government and Public Involvement in Health Act 2007 ss 74(1), 241, Sch 3, paras 1, 12, Sch 18, Pt 3). As to executive arrangements see PARA 303 et seq.

7 A member of an executive of a principal council may not be chosen to preside under the Local Government Act 1972 Sch 12 para 5(3): Sch 12 para 5(4) (added by the Local Government Act 2000 Sch 3 para 14).

8 Local Government Act 1972 Sch 12 para 5(3)(a) (amended by the Local Government Act 1985 s 102, Sch 17). However, in the case of a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 316), or the Metropolitan Police Authority the Local Government Act 1972 Sch 12 para 5(3) (a) does not apply, and if the chairman is absent from a meeting of such an authority another member chosen by the members of the authority present must preside: Sch 12 para 6B(b) (as added, substituted and amended: see note 3).

9 Local Government Act 1972 Sch 12 para 5(3)(c). However, in the case of a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), or the Metropolitan Police Authority, the Local Government Act 1972 Sch 12 para 5(3)(c) does not apply, and if the chairman is absent from a meeting of such an authority another member chosen by the members of the authority present must preside: Sch 12 para 6B(b) (as added, substituted and amended: see note 3).

10 Is subject to the Local Government Act 1972 Sch 12 para 45: see the text and notes 12-13.

11 Local Government Act 1972 Sch 12 para 6.

12 As to disqualification see PARA 119.

13 Local Government Act 1972 s 99, Sch 12 para 45.

14 As to committees and sub-committees see PARA 371 et seq.

15 As to joint committees see PARA 380.

16 See the Local Government Act 1972 s 106; and PARA 373. As to standing orders see PARA 620.

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(iv) Other Meetings

A. PARISH COUNCILS AND COMMUNITY COUNCILS

631. Annual meetings.

A parish council or community council¹ must in every year hold an annual meeting². In a year which is a year of ordinary elections³ of parish or community councillors, the annual meeting of a parish council must be held on, or within 14 days after, the day on which the councillors elected at that election take office, and in any other year the annual meeting must be held on such day in May as the parish or community council may determine⁴. The annual meeting of a parish or community council is to be held at such hour as the council may fix or, if no hour is so fixed, at 6 pm⁵.

1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

2 Local Government Act 1972 s 99, Sch 12 paras 7(1), 23(1). As to other meetings of parish or community councils see PARA 632.

3 As to local government elections see PARAS 126-139; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARAS 10-11.

4 Local Government Act 1972 Sch 12 paras 7(2), 23(2).

5 Local Government Act 1972 Sch 12 paras 7(3), 23(3).

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632. Other meetings.

A parish council¹ may in every year hold, in addition to the annual meeting², such other meetings, not less than three, as it may determine³, and a community council⁴ may hold such other meetings as it may determine for the transaction of its business⁵. Those other meetings must be held at such hours and on such days as the council may determine⁶.

An extraordinary meeting of a parish or community council may be called at any time by the chairman of the council⁷. Where the chairman refuses to call an extraordinary meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, or if without so refusing the chairman does not call an extraordinary meeting within seven days after such a requisition has been presented to him, any two members of the council, on that refusal or on the expiration of those seven days, as the case may be, may forthwith convene an extraordinary meeting of the council⁸.

- 1 As to parish councils see PARA 27 et seq.
- 2 As to annual meetings see PARA 631.
- 3 Local Government Act 1972 s 99, Sch 12 para 8(1).
- 4 As to community councils see PARA 41 et seq.
- 5 Local Government Act 1972 Sch 12 para 24(1).
- 6 Local Government Act 1972 Sch 12 paras 8(2), 24(2).
- 7 Local Government Act 1972 Sch 12 paras 9(1), 25(1).
- 8 Local Government Act 1972 Sch 12 paras 9(2), 25(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(1) MEETINGS/(iv) Other Meetings/A. PARISH COUNCILS AND COMMUNITY COUNCILS/633. Place of council meeting and procedure for calling council meetings.

633. Place of council meeting and procedure for calling council meetings.

Meetings of a parish or community council¹ are held at such place, either within or without its area, as it may direct, but must not be held in premises which at the time of such a meeting may, by virtue of a premises licence or temporary event notice under the Licensing Act 2003, be used for the supply of alcohol² unless no other suitable room is available either free of charge or at a reasonable cost³.

Three clear days⁴ at least before a meeting of a parish or community council: (1) notice of the time and place of the intended meeting must be fixed in some conspicuous place in the parish or community and, where the meeting is called by members of the council, the notice must be signed by those members and must specify the business proposed to be transacted at the meeting⁵; and (2) a summons to attend the meeting, specifying the business proposed to be transacted and signed by the proper officer⁶ of the council, must be left at or sent by post to the usual place of residence of every member of the council⁷. Want of service of any such summons on any member of the parish or community council does not affect the validity of the meeting⁸.

- 1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to annual meetings of parish councils see PARA 631; and as to other meetings of parish councils see PARA 632.
- 2 le within the meaning of the Licensing Act 2003 s 14 (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30).
- 3 Local Government Act 1972 s 99, Sch 12 paras 10(1), 26(1) (amended by the Licensing Act 2003 Sch 6 para 61(2)). As to premises see PARA 621 et seq.
- 4 As to the meaning of 'three clear days' see PARA 627 note 3.
- 5 Local Government Act 1972 Sch 12 paras 10(2)(a), 26(2)(a). As to public notices see PARA 577.
- 6 As to the proper officer see PARA 431.
- 7 Local Government Act 1972 Sch 12 paras 10(2)(b), 26(2)(b). As to authentication of documents see PARAS 574-575.
- 8 Local Government Act 1972 Sch 12 paras 10(3), 26(3).

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634. Chairmanship and conduct of business.

At a meeting of a parish or community council¹ the chairman, if present, or in his absence the vice-chairman, if present, must preside². If the chairman and the vice-chairman of the council are absent from a meeting of the council, such councillor as the members present choose must preside³.

No business may be transacted at a meeting of a parish or community council⁴ unless at least one-third of the whole number of members of the council are present at the meeting⁵. However, where more than one-third of the members of a parish or community council become disqualified⁶ at the same time, then, until the number of members in office is increased to not less than two-thirds of the whole number of members of the authority, the quorum of the authority is to be determined by reference to the number of members of the authority remaining qualified instead of by reference to the whole number of members of the authority⁷. The quorum of committees or sub-committees⁸ or joint committees⁹ may be regulated by standing order¹⁰.

Unless otherwise provided by the council's standing orders, the manner of voting at parish or community council meetings must be by show of hands¹¹. On the requisition of any member of the council, the voting on any question must be recorded so as to show whether each member present and voting gave his vote for or against that question¹².

- 1 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq. As to annual meetings of parish or community councils see PARA 631; and as to other meetings of parish or community councils see PARA 632.
- 2 Local Government Act 1972 s 99, Sch 12 paras 11(1), (2), 27(1), (2).
- 3 Local Government Act 1972 Sch 12 paras 11(3), 27(3).
- 4 le subject to the Local Government Act 1972 Sch 12 para 45: see the text and notes 6-7.
- 5 Local Government Act 1972 Sch 12 paras 12, 28. However, notwithstanding anything in Sch 12 para 45 (see the text and notes 6-7), in no case may the quorum be less than three: Sch 12 paras 12, 28. As to casting votes of chairmen see PARA 623.

- 6 As to disqualification see PARA 119.
- 7 Local Government Act 1972 s 99, Sch 12 para 45.
- 8 As to committees and sub-committees see PARA 371 et seq.
- 9 As to joint committees see PARA 380.
- 10 See the Local Government Act 1972 s 106; and PARA 373. As to standing orders see PARA 620.
- 11 Local Government Act 1972 Sch 12 paras 13(1), 29(1). As to decisions by vote see PARA 623.
- 12 Local Government Act 1972 Sch 12 paras 13(2), 29(2). As to minutes see PARA 625.

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B. PARISH MEETINGS AND COMMUNITY MEETINGS

635. Convening parish and community meetings.

The parish meeting of a parish¹ must assemble annually on some day between 1 March and 1 June, both inclusive, in every year². Parish meetings must be held on such days and at such times as may be fixed by the parish council³ or, if there is no parish council, by the chairman of the parish meeting⁴. In a parish which does not have a separate parish council, the parish meeting must, subject to any provision made by a grouping order⁵, assemble at least twice a year⁶. A parish meeting may be convened by: (1) the chairman of the parish council⁷; (2) any two parish councillors for the parish⁸; (3) where there is no parish council, the chairman of the parish meeting or any person representing the parish on the district council⁹; or (4) any six local government electors¹⁰ for the parish¹¹.

A community meeting¹² may be convened at any time: (a) in a case where there is a community council¹³, by the chairman of the council or by any two councillors representing the community on the council¹⁴; and (b) in any case, by any six local government electors for the community¹⁵.

The proceedings at a parish or community meeting must not commence earlier than 6 pm¹⁶. A parish or community meeting must not be held in premises which at the time of such a meeting may, by virtue of a premises licence or temporary event notice under the Licensing Act 2003, be used for the supply of alcohol¹⁷ except in cases where no other suitable room is available for such a meeting either free of charge or at a reasonable cost¹⁸.

- 1 As to parish meetings see PARA 34.
- 2 Local Government Act 1972 s 99, Sch 12 para 14(1).
- 3 As to parish councils see PARA 27 et seq.
- 4 Local Government Act 1972 Sch 12 para 14(2). As to chairmanship see PARA 637.
- 5 As to grouping of parishes see PARA 29.
- 6 Local Government Act 1972 Sch 12 para 14(3).
- 7 Local Government Act 1972 Sch 12 para 15(1)(a).
- 8 Local Government Act 1972 Sch 12 para 15(1)(b).

- 9 Local Government Act 1972 Sch 12 para 15(1)(c). As to areas and authorities in England see PARA 24 et seq.
- 10 As to the meaning of 'local government elector' see PARA 127 note 2.
- 11 Local Government Act 1972 Sch 12 para 15(1)(d).
- 12 As to community meetings see PARA 46.
- 13 As to community councils see PARA 41 et seq.
- 14 Local Government Act 1972 Sch 12 para 30(1)(a).
- 15 Local Government Act 1972 Sch 12 para 30(1)(b).
- 16 Local Government Act 1972 Sch 12 paras 14(4), 32(1). As to expenses of parish or community meetings see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 522.
- 17 le within the meaning of the Licensing Act 2003 s 14 (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 30).
- 18 Local Government Act 1972 Sch 12 paras 14(5), 32(2) (amended by the Licensing Act 2003 Sch 6 para 61(3)). As to premises see PARA 621 et seq. As to public notice of meetings see PARA 636.

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636. Public notice of parish and community meetings.

In general, public notice of a parish meeting¹ must be given not less than seven clear days before the meeting, specifying the time and place of the intended meeting, and the business to be transacted at the meeting, and signed by the person or persons convening the meeting². However, where any business proposed to be transacted at a parish meeting relates to the establishment or dissolution of a parish council³ or the grouping⁴ of the parish with another parish or parishes under a common parish council⁵, public notice must be given not less than 14 clear days before the parish meeting⁶. Public notice of a parish meeting must be given by posting a notice of the meeting in some conspicuous place or places in the parish⁷ and in such other manner, if any, as appears to the person or persons convening the meeting to be desirable for giving publicity to the meeting⁸.

Public notice of any community meeting⁹ must be given not less than seven clear days before the meeting¹⁰. The notice required must specify the time and place of the intended meeting¹¹, and the business to be transacted at the meeting¹², and must be signed by the person or persons convening the meeting¹³. Public notice of a community meeting must be given by posting a notice of the meeting in some conspicuous place or places in the community¹⁴ and in such other manner, if any, as appears to the person or persons convening the meeting to be desirable for giving publicity to the meeting¹⁵.

- 1 As to parish meetings see PARA 34. As to convening parish meetings see PARA 635; and as to public notice see PARA 577.
- 2 See the Local Government Act 1972 s 99, Sch 12 para 15(2).
- 3 Local Government Act 1972 Sch 12 para 15(3)(a). As to parish councils see PARA 27 et seq.
- 4 As to grouping of parishes see PARA 29.
- 5 Local Government Act 1972 Sch 12 para 15(3)(b).

- 6 See the Local Government Act 1972 Sch 12 para 15(3).
- 7 Local Government Act 1972 Sch 12 para 15(4)(a).
- 8 Local Government Act 1972 Sch 12 para 15(4)(b).
- 9 As to community meetings see PARA 46. As to convening community meetings see PARA 635.
- 10 Local Government Act 1972 Sch 12 para 30(2) (substituted by the Local Government (Wales) Act 1994 s 12(2)). However, where any business proposed to be transacted at a community meeting relates to any of the matters mentioned in the Local Government Act 1972 s 29B(4) (see PARA 44), public notice of the meeting must be given not less than 30 clear days before the meeting: Sch 12 para 30(3) (Sch 12 para 30(3), (3A) added by the Local Government (Wales) Act 1994 s 12(2)).
- 11 Local Government Act 1972 Sch 12 para 30(3A)(a) (as added: see note 10).
- 12 Local Government Act 1972 Sch 12 para 30(3A)(b) (as added: see note 10).
- 13 Local Government Act 1972 Sch 12 para 30(3A)(c) (as added: see note 10). As to authentication of documents see PARAS 574-575.
- 14 Local Government Act 1972 Sch 12 para 30(4)(a).
- 15 Local Government Act 1972 Sch 12 para 30(4)(b).

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637. Chairmanship.

In a parish having a separate parish council¹, the chairman of that council², if present, must preside at a parish meeting³, and in his absence, the vice-chairman of that council, if any, must, if present, preside⁴. Where there is no separate parish council, the chairman of the parish meeting chosen for the year⁵, if present, must preside⁶. Where the chairman and the vice-chairman of the parish council or the chairman of the parish meeting, as the case may be, is absent from an assembly of the parish meeting, the parish meeting may appoint a person to take the chair, and that person has, for the purposes of that meeting, the powers and authority of the chairman⁷.

In a community for which there is a community council⁸ the chairman of that council, if present, must preside at a community meeting⁹. In any other case, a community meeting must appoint a person to be chairman at that meeting¹⁰.

The chairman of a parish or community council is entitled to attend a parish or community meeting for the parish or community, or where a grouping order¹¹ is in force, for any of the parishes or communities comprised in the group, whether or not he is a local government elector¹² for the parish or community, but if he is not such an elector he is not entitled to give any vote at the meeting other than any casting vote¹³ which he may have¹⁴.

- 1 As to parish councils see PARA 27 et seq.
- 2 As to chairmanship of parish and community councils see PARA 634.
- 3 As to parish meetings see PARA 34. As to convening parish meetings see PARA 635.
- 4 Local Government Act 1972 s 99, Sch 12 para 17(1).
- 5 ie under the Local Government Act 1972 s 15(10) (see PARA 146) or s 88(3) (see PARA 148).

- 6 Local Government Act 1972 Sch 12 para 17(2).
- 7 Local Government Act 1972 Sch 12 para 17(3).
- 8 As to community councils see PARA 41 et seq.
- 9 Local Government Act 1972 Sch 12 para 33(1). As to community meetings see PARA 46. As to convening community meetings see PARA 635.
- 10 Local Government Act 1972 Sch 12 para 33(2).
- 11 As to grouping of parishes see PARA 29; and as to grouping of communities see PARA 43.
- 12 As to the meaning of 'local government elector' see PARA 127 note 2.
- 13 Ie by virtue of the Local Government Act 1972 Sch 12 paras 18(3), 34(3); see PARA 638. As to casting votes generally see PARA 623.
- 14 Local Government Act 1972 Sch 12 paras 16, 31. As to voting and polls see PARA 638.

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638. Voting and polls.

A question to be decided by a parish or community meeting¹ must, in the first instance, be decided by the majority of those present at the meeting and voting at it². Each local government elector³ may, at a parish meeting or at a poll consequent at it, give one vote and no more on any question⁴. The decision of the person presiding⁵ as to the result of the voting is final unless a poll is demanded⁶. However, in the case of an equality of votes, the person presiding at the meeting has a casting vote⁷, in addition to any other vote he may have⁸.

A poll may be demanded before the conclusion of a parish or community meeting on any question arising at the meeting⁹. However, no poll may be taken unless either the person presiding at the meeting consents, or the poll is demanded by not less than ten, or one-third, of the local government electors present at the meeting, whichever is the less¹⁰. A poll consequent on a parish or community meeting is a poll of those entitled to attend the meeting as local government electors, and must be taken by ballot in accordance with rules made by the Secretary of State or the Welsh Ministers¹¹. The rules that have been made include provision for the conduct of polls, the counting of votes, equality of votes, the declaration of results and the form of ballot paper¹².

- 1 As to parish meetings see PARA 34; and as to community meetings see PARA 46. As to convening parish or community meetings see PARA 635.
- 2 Local Government Act 1972 s 99, Sch 12 paras 18(2), 34(2). As to voting see PARA 623.
- 3 As to the meaning of 'local government elector' see PARA 127 note 2.
- 4 Local Government Act 1972 Sch 12 paras 18(1), 34(1).
- 5 As to chairmanship of parish or community meetings see PARA 637.
- 6 Local Government Act 1972 Sch 12 paras 18(2), 34(2).
- 7 As to casting votes see PARA 623.

8 Local Government Act 1972 Sch 12 paras 18(3), 34(3).

9 Local Government Act 1972 Sch 12 paras 18(4), 34(4). Cf *Bennett v Chappell* [1966] Ch 391, [1965] 3 All ER 130, CA. As to expenses see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 522.

10 Local Government Act 1972 Sch 12 paras 18(4), 34(4).

11 Local Government Act 1972 Sch 12 paras 18(5), 34(5). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the rules that have been made see the Parish and Community Meetings (Polls) Rules 1987, SI 1987/1 (amended by SI 1987/262; SI 2005/2114); the text and note 12; and **ELECTIONS AND REFERENDUMS**.

Subject to any adaptations, alterations or exceptions made by the rules made under the Local Government Act 1972 Sch 12 para 18(5) or Sch 12 para 34(5), the provisions of the rules with respect to the elections of parish or community councillors under the Representation of the People Act 1983 s 36 and of the enactments mentioned in s 187(1) (see **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARA 761) apply in the case of a poll taken in accordance with the Local Government Act 1972 Sch 12 para 18(5) or Sch 12 para 34(5) as if it were a poll for the election of parish or community councillors: s 99, Sch 12 paras 18(5), 34(5) (amended by the Representation of the People Act 1983 s 206, Sch 8 para 14). As to the election of parish councillors see PARA 132; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 207. As to the election of community councillors see PARA 133; and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 207. The Local Government Act 1972 also makes provision for the use of ballot boxes at polls of parish or community meetings and as to offences at such polls: see Sch 12 paras 21, 22, 37, 38; and **ELECTIONS AND REFERENDUMS** vol 15(4) (2007 Reissue) PARAS 396-397, 741.

12 See the Parish and Community Meetings (Polls) Rules 1987, SI 1987/1, r 5, Schedule (amended by SI 1987/262; and SI 2005/2114). As to the computation of time for polls and elections see PARA 126 note 11.

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639. Minutes.

Minutes of the proceedings of a parish meeting¹ or of a committee² thereof or of a community meeting³ must be drawn up and entered in a book provided for the purpose⁴, and must be signed at the same or next following assembly of the parish meeting or meeting of the committee or at the conclusion of the community meeting by the person presiding at the meeting⁵.

Until the contrary is proved, a parish meeting or a meeting of a committee thereof or a community meeting in respect of the proceedings of which a minute has been made and signed is deemed to have been duly convened and held and all the persons present are deemed to have been duly qualified⁶. Where the proceedings are those of a committee of a parish meeting, the committee is deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes⁷.

The minutes of proceedings of a parish meeting are open to the inspection of a local government elector⁸ for the parish, who may make a copy of or extract from them⁹.

1 As to parish meetings see PARA 34. As to convening parish meetings see PARA 635.

2 As to committees of parish meetings see PARA 381.

3 As to convening community meetings see PARA 635. As to community meetings see PARA 46.

4 In the case of a community meeting, the book is provided by the proper officer of the community council where there is one or, where there is not, by the proper officer of the principal area in which the community is situated: Local Government Act 1972 s 99, Sch 12 para 35(1) (amended by the Local Government (Wales) Act

1994 s 66(5), Sch 15 para 62). As to the meaning of 'principal area' see PARA 23. As to the proper officer see PARA 431.

5 Local Government Act 1972 Sch 12 paras 19(1), 35(1). Any minutes purporting to be so signed are to be received in evidence without further proof: Sch 12 paras 19(1), 35(1). As to minutes generally see PARA 625. As to the person presiding see PARA 637.

6 Local Government Act 1972 Sch 12 paras 19(2), 35(2).

7 Local Government Act 1972 Sch 12 paras 19(2), 35(2).

8 As to the meaning of 'local government elector' see PARA 127 note 2.

9 Local Government Act 1972 s 228(1), (8) (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 6). As to custody of parish or community documents see PARA 537.

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640. Regulation of proceedings.

In a parish having a separate parish council¹ that council may make, vary or revoke standing orders² for the regulation of proceedings and business at parish meetings³. In a parish not having a separate parish council, the parish meeting, or, in a community, the community meeting⁴ may regulate its own proceedings and business⁵.

1 As to parish councils see PARA 27 et seq.

2 As to standing orders see PARA 620.

3 Local Government Act 1972 s 99, Sch 12 para 20(1). Such standing orders are, however, subject to the provisions of the Local Government Act 1972: Sch 12 para 20(1). As to parish meetings see PARA 34. As to convening parish meetings see PARA 635.

4 As to community meetings see PARA 46. As to convening community meetings see PARA 635.

5 See the Local Government Act 1972 Sch 12 paras 20(2), 36. The regulation of proceedings and business is subject to the provisions of the Local Government Act 1972: Sch 12 paras 20(2), 36.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(2) ADMISSION TO MEETINGS AND ACCESS TO INFORMATION/(i) General Principles/A. ADMISSION/641. Bodies and committees required to open meetings to the public.

(2) ADMISSION TO MEETINGS AND ACCESS TO INFORMATION

(i) General Principles

A. ADMISSION

641. Bodies and committees required to open meetings to the public.

Any meeting of one of the following bodies exercising public functions is open to the public¹:

- 544 (1) parish or community councils², the Council of the Isles of Scilly³ and joint boards or joint committees⁴;
- 545 (2) parish meetings⁵;
- 546 (3) the Council for Healthcare Regulatory Excellence⁶;
- 547 (4) the Care Council for Wales⁷;
- 548 (5) the General Social Care Council⁸;
- 549 (6) the Care Quality Commission⁹;
- 550 (7) Strategic Health Authorities¹⁰;
- 551 (8) where the order establishing a special health authority so provides, the special health authority¹¹;
- 552 (9) primary care trusts¹²;
- 553 (10) Local Health Boards¹³;
- 554 (11) bodies not mentioned above but having, within the meaning of the Public Works Loans Act 1875, power to levy a rate¹⁴;
- 555 (12) regional and local flood defence committees¹⁵;
- 556 (13) advisory committees established and maintained under the Environment Act 1995¹⁶;
- 557 (14) customer service committees maintained under the Water Industry Act 1991¹⁷;
- 558 (15) national health service trusts established under the National Health Service Act 2006¹⁸; and
- 559 (16) the Wales Centre for Health¹⁹.

As from a day to be appointed, the meetings of the Office of the Health Professions Adjudicator²⁰ are also required to be open to the public²¹.

1 See the Public Bodies (Admission to Meetings) Act 1960 s 1(1) (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 4, Sch 3). Where the Public Bodies (Admission to Meetings) Act 1960 applies to a body, s 1 applies in relation to any committee of the body whose members consist of or include all members of the body, as it applies in relation to the body itself, but so that for the purposes of s 1(4)(c) premises belonging to the body must be treated as belonging to the committee: s 2(1). Any body established by or under any Act may be added to the list of bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies, and any body added may be removed from it by order of the appropriate minister made by statutory instrument: see s 2(3).

For the purpose of securing the admission, so far as practicable, of the public, including the press, to all meetings of committees of local authorities as well as to meetings of local authorities themselves, the Public Bodies (Admission to Meetings) Act 1960 has effect subject to the Local Government Act 1972 s 100(2), (3): s 100(1). Without prejudice to the Public Bodies (Admission to Meetings) Act 1960 s 2(1), s 1 applies to any committee appointed by one or more local authorities under the Local Government Act 1972 s 102 (see PARA 371), not being a committee falling within the Public Bodies (Admission to Meetings) Act 1960 s 2(1) or the Local Government Act 1972 s 100E(3)(a) or (b) (see PARA 661 et seq), whether or not by virtue of s 100J (see PARAS 661, 667): s 100(2) (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 6, Sch 3).

2 As to parish councils see PARA 27 et seq; and as to community councils see PARA 41 et seq.

3 As to the Council of the Isles of Scilly see PARA 36.

4 Public Bodies (Admission to Meetings) Act 1960 s 2, Schedule para 1(a) (substituted by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 4). The joint boards and joint committees referred to in the text are those which discharge the functions of any of those bodies mentioned in the text, or any of those bodies and of a principal council, within the meaning of the Local Government Act 1972, or a body falling within s 100J(1)(a), (b) or (c) (see PARA 661 note 1): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(a) (as so substituted). As to joint boards and joint committees see PARA 10; and as to joint arrangements see PARA 380. As to the meaning of 'principal council' see PARA 23. As to the discharge of functions see PARA 369 et seq.

5 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(b). As to the meaning of 'parish meeting' see **PARA 34**; and as to the meaning of 'community meeting' see **PARA 46**.

6 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(bca) (added by the Health and Social Care Act 2008 s 25(4), Sch 10 para 3(a)).

7 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(bd) (added by the Care Standards Act 2000 ss 6, 54, 66, Sch 1 para 23). As to the Care Council for Wales see **SOCIAL SERVICES AND COMMUNITY CARE**.

8 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(be) (added by the Care Standards Act 2000 ss 6, 54, 66, Sch 1 para 23). As to the General Social Care Council see **SOCIAL SERVICES AND COMMUNITY CARE**.

9 See the Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(bj) (prospectively added by the Health and Social Care Act 2008 Sch 5(3) para 55(b)). As to the Care Quality Commission see **SOCIAL SERVICES AND COMMUNITY CARE**.

10 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(ea) (added by SI 2002/2469). As to Strategic Health Authorities see **HEALTH SERVICES** vol 54 (2008) **PARA 94** et seq.

11 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(g) (added by the Health and Social Services and Social Security Adjudications Act 1983 s 29, Sch 9, Pt I, para 7; and substituted by the Health Authorities Act 1995 Sch 1 para 91). As to special health authorities see **HEALTH SERVICES** vol 54 (2008) **PARA 136** et seq.

12 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(gg) (added by the Health Act 1999 Sch 4 para 1). Primary care trusts as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (see **HEALTH SERVICES** vol 54 (2008) **PARA 619** et seq) or any regulations amending or replacing those regulations are excepted: Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(gg) (as added; amended by SI 2002/2469). As to primary care trusts see **HEALTH SERVICES** vol 54 (2008) **PARA 111**.

13 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(gh) (added by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 1). As to Local Health Boards see **HEALTH SERVICES** vol 54 (2008) **PARA 74**.

14 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(h) (amended by the Local Government (Access to Information) Act 1985 Sch 2 para 4). The bodies referred to in the text are bodies other than bodies to which the Local Government Act 1972 ss 100A-100D (see **PARA 661** et seq) apply, whether or not by virtue of s 100E or s 100J (see **PARAS 661-664**): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(h) (as so amended). As to the Public Works Loans Act 1875 see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) **PARA 1377** et seq.

15 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(i) (added by the Water Act 1989 s 190, Sch 25 para 28). As to flood defence committees see **WATER AND WATERWAYS** vol 101 (2009) **PARA 559** et seq.

16 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(j) (added by the Water Act 1989 Sch 25 para 28; and amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 1). The reference in the text to an advisory committee is a reference to an advisory committee maintained under the Environment Act 1995 s 12 or s 13 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) **PARAS 83-84**).

17 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(k) (added by the Water Act 1989 Sch 25 para 28; and substituted by the Water Act 2003 s 101(1), Sch 7, Pt 2, para 17). The reference in the text to the Water Industry Act 1991 is a reference to the Water Industry Act 1991 s 27A (see **WATER AND WATERWAYS** vol 100 (2009) **PARA 117**): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(k) (as so added and amended).

18 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(l) (added by SI 1997/2763; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 27). The reference in the text to the National Health Service Act 2006 is a reference to the National Health Service Act 2006 s 25 (see **HEALTH SERVICES** vol 54 (2008) **PARA 155**): Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(l) (as so added and amended).

19 Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(m) (added by the Health (Wales) Act 2003 Sch 3 para 1).

20 See the Public Bodies (Admission to Meetings) Act 1960 Schedule para 1(bcb) (prospectively added by the Health and Social Care Act 2008 s 25(4), Sch 10 para 3(a)).

22 See the Public Bodies (Admission to Meetings) Act 1960 s 1(1) (as amended: see note 1).

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B. CONFIDENTIAL INFORMATION

642. Confidential information.

The public must be excluded from certain meetings if confidential information is likely to be disclosed¹. Confidential information is information²:

- 560 (1) provided to a local authority by a government department³ which prohibits disclosure of the information to the public; or
- 561 (2) the disclosure of which to the public is prohibited by or under any enactment or by the order of a court⁴.

1 See the Local Government Act 1972 s 100A(2); the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21; and PARAS 646, 657.

2 For these purposes 'information' includes an expression of opinion, any recommendations and any decision made: see the Local Government Act 1972 s 100K (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1)); Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

3 This includes the Welsh Ministers: see the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

4 See the Local Government Act 1972 s 100A(3); the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

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C. EXEMPT INFORMATION

643. Exempt information.

The following descriptions of information¹ are exempt from the provisions relating to the admission of the public to meetings and access to documents²:

- 562 (1) information relating to any individual³;
- 563 (2) information which is likely to reveal the identity of an individual⁴;
- 564 (3) information relating to the financial or business affairs⁵ of any particular person (including the authority holding that information)⁶;

- 565 (4) information relating to any consultations or negotiations, or contemplated
consultations or negotiations, in connection with any labour relations⁷ matter
arising between the authority or a Minister of the Crown and employees⁸ of, or
office holders⁹ under, the authority¹⁰;
- 566 (5) information in respect of which a claim to legal professional privilege could be
maintained in legal proceedings¹¹;
- 567 (6) information which reveals that the authority proposes:
743
27. (a) to give under any enactment a notice under or by virtue of which
requirements are imposed on a person; or
28. (b) to make an order or direction under any enactment¹²;
- 744
- 568 (7) information relating to any action taken or to be taken in connection with the
prevention, investigation or prosecution of crime¹³.

The Secretary of State or the Welsh Ministers¹⁴ may by order vary the descriptions of exempt
information¹⁵.

1 As to the meaning of 'information' see PARA 642 note 2. Information falling within the Local Government Act 1972 Sch 12A paras 3, 14 is not exempt information by virtue of those provisions if it is required to be registered under the Companies Acts, the Friendly Societies Act 1974, the Friendly Societies Act 1992, the Industrial and Provident Societies Acts 1965-1978, the Building Societies Act 1986 or the Charities Act 1993: Local Government Act 1972 Sch 12A paras 8, 19 (Sch 12A added by the Local Government (Access to Information) Act 1985 Sch 1, Pt 1; Local Government Act 1972 Sch 12A paras 1-11 substituted by SI 2006/88; and the Local Government Act 1972 Sch 12A paras 12-22 substituted by SI 2007/969; Local Government Act 1972 Sch 12A paras 8, 19 amended by SI 2007/2194). As to the meaning of the 'Companies Acts' see the Companies Act 2006 s 2; and **COMPANIES** vol 14 (2009) PARA 16. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 893): Local Government Act 1972 Sch 12A paras 9, 20 (as so added and substituted). Information which falls within any of Sch 12A paras 1-7 or paras 12-15, 17, 18, and is not prevented from being exempt by virtue of Sch 12A para 8 or 9 or 19 or 20, is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information: Sch 12A paras 10, 21 (as so added and substituted).

2 See the Local Government Act 1972 ss 100I(1), (1A), 100K(1); and PARA 662. The provisions referred to in the text are those of the Local Government Act 1972 Pt VA (ss 100A-100K).

3 Local Government Act 1972 Sch 12A paras 1, 12 (as added and substituted: see note 1).

4 Local Government Act 1972 Sch 12A paras 2, 13 (as added and substituted: see note 1).

5 'Financial or business affairs' includes contemplated, as well as past or current, activities: Local Government Act 1972 Sch 12A paras 11(1), 22(1) (as added and substituted: see note 1).

6 Local Government Act 1972 Sch 12A paras 3, 14 (as added and substituted: see note 1).

7 'Labour relations matter' means: (1) any of the matters specified in the Trade Union and Labour Relations Act 1974 s 29(1)(a)-(g) (repealed: see now the Trade Union and Labour Relations (Consolidation) Act 1992 s 178(1), (2); and **EMPLOYMENT**); or (2) any dispute about a matter falling within head (1): Local Government Act 1972 Sch 12A paras 11(1), 22(1) (as added and substituted: see note 1). For the purposes of this definition the enactments mentioned in head (1) above, with the necessary modifications, apply in relation to office-holders under the authority as they apply in relation to employees of the authority: Sch 12A paras 11(1), 22(1) (as so added and substituted).

8 'Employee' means a person employed under a contract of service: Local Government Act 1972 Sch 12A paras 11(1), 22(1) (as added and substituted: see note 1).

9 'Office-holder', in relation to the authority, means the holder of any paid office, appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority: Local Government Act 1972 Sch 12A paras 11(1), 22(1) (as added and substituted (see note 1)).

Any reference in Sch 12A to 'the authority' is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined, and includes a reference: (1) in the case of a principal council, to any committee or sub-committee of the council; and (2) in the case of a committee (a) to any constituent principal council; (b) to any other principal council by which appointments are made to the committee or whose functions the committee discharges; and (c) to any other committee or sub-committee of a principal council falling within head (a) or head (b) above; and (3) in the case of a sub-committee, to the committee, or any of the committees, of which it is a sub-committee, and any principal council which falls within head (2) above in relation to that committee: Sch 12A paras 11(2), 22(2) (as added and substituted: see note 1).

As to joint boards see PARA 10. As to the meaning of 'principal council' see PARA 23. As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2. As to the meaning of 'constituent principal council' see PARA 661 note 11. As to discharge of functions generally see PARA 369 et seq.

10 Local Government Act 1972 Sch 12A paras 4, 15 (as added and substituted: see note 1).

11 Local Government Act 1972 Sch 12A paras 5, 16 (as added and substituted: see note 1).

12 Local Government Act 1972 Sch 12A paras 6, 17 (as added and substituted: see note 1).

13 Local Government Act 1972 Sch 12A paras 7, 18 (as added and substituted: see note 1).

14 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

15 See the Local Government Act 1972 s 100I(2), (2A), (3A) (s 100I added by the Local Government (Access to Information) Act 1985 s 1(1); the Local Government Act 1972 s 100I(2) amended and s 100I(2A), (3A) added by SI 2006/88). As to the orders made see the Local Government (Access to Information) (Variation) Order 2006, SI 2006/88; and the Local Government (Access to Information) (Variation) (Wales) Order 2007, SI 2007/969.

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(ii) Specific Requirements

A. MEETINGS OF THE EXECUTIVE

(A) PUBLIC ACCESS TO MEETINGS

644. Generally.

Meetings of a local authority executive¹, or a committee of such an executive, may be open to the public or held in private². It is for a local authority executive to decide³ which of its meetings, and which of the meetings of any committee of the executive, are to be open to the public, and which of those meetings are to be held in private⁴. However the Secretary of State or the Welsh Minister⁵ may by regulations make provision as to the circumstances under which such meetings must be open to the public or must be held in private⁶.

The Secretary of State or the Welsh Ministers may by regulations also make provision with respect to the access of the public to meetings of joint committees⁷, or sub-committees of such committees, at which decisions are made in connection with the discharge of functions which are the responsibility of executives⁸, including provision enabling such meetings to be held in private⁹.

1 As to executive arrangements see PARA 303 et seq. As to the meaning of 'local authority' see PARA 23.

2 Local Government Act 2000 s 22(1).

3 le subject to regulations under the Local Government Act 2000 s 22(9).

4 Local Government Act 2000 s 22(2).

5 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 See the Local Government Act 2000 s 22(9)(a), (b). As to the regulations relating to meetings in Wales see the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, regs 3, 4; and PARA 645. As to the regulations relating to England see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 7, 21; and PARAS 646, 674.

7 'Joint committee' means a joint committee falling within the Local Government Act 1972 s 101(5)(a) (see PARA 380); Local Government Act 2000 s 22(13).

8 As to executive arrangements see PARA 303 et seq. As to the discharge of functions by executives see PARAS 324-326; and as to the discharge of functions generally see PARA 369 et seq.

9 Local Government Act 2000 s 22(8)(a). The Secretary of State or the Welsh Ministers may also by regulations make provision which applies or reproduces, with or without modifications, any provisions of Part VA of the Local Government Act 1972 Pt VA (see ss 100A-100K) in relation to meetings of: (1) local authority executives or committees of such executives; or (2) joint committees, or sub-committees of such committees, falling within s 22(8)(a); Local Government Act 2000 s 22(12).

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645. Meetings of local authority executives and their committees to be held in public in Wales.

In relation to Wales, meetings of the executive of a local authority¹ or of a committee or sub-committee of such an executive must be held in public except to the extent that the public are excluded under the following provisions².

The public must be excluded from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information³ would be disclosed to them in breach of the obligation of confidence; and nothing in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁴ must be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence⁵.

A local authority executive may pass a resolution to exclude the public from a meeting of the executive during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information⁶.

The following apply in relation to a public meeting:

- 569 (1) public notice of the time and place of the meeting must be given by posting it at the principal offices of the authority three clear days at least before the meeting or where the meeting is convened at shorter notice by posting it at the principal offices of the authority at the time that the meeting is convened⁷; and

- 570 (2) while the meeting is open to the public the executive or, as the case may be, the committee, must not have power to exclude members of the public from the meeting and duly accredited representatives of newspapers attending the meeting for the purpose of reporting the proceedings for those newspapers must, so far as practicable, be afforded reasonable facilities for taking their report and, unless the meeting is held in premises not belonging to the authority or not on the telephone, for telephoning the report at their own expense⁸.

Nothing in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 requires an executive or committee to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place⁹.

The above is without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting¹⁰.

1 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to the situation in relation to England see PARA 646.

2 See the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, regs 3, 4(1).

3 As to the meanings of 'confidential information' and 'information' see PARA 642.

4 In the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290.

5 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(2).

6 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(3). This applies in relation to a committee of a local authority executive and a meeting of that committee as it applies in relation to a local authority executive and a meeting of the executive: reg 4(4). A resolution under reg 4(3) (including as applied by reg 4(4)) must identify the proceedings, or the part of the proceedings, to which it applies and state, by reference to the descriptions in the Local Government Act 1972 Sch 12A (see PARA 643), the description of exempt information giving rise to the exclusion of the public: Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(5). As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

7 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(6)(a).

8 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(6)(b). 'Report' in relation to an executive decision does not include a report in draft form: reg 2.

9 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(7).

10 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4(8).

646. Meetings of a decision making body in England.

Nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000¹ is to prevent the exclusion of the public from a meeting of a decision making body² that is exercising an executive function³ where:

- 571 (1) it is likely, in view of the nature of the business to be transacted or of the nature of the proceedings, that if members of the public were present during the transaction of an item of business, confidential information⁴ would be disclosed to them in breach of the obligation of confidence⁵;
- 572 (2) a resolution has been passed, by the decision making body concerned, excluding the public during the transaction of an item of business where it is likely, in view of the nature of the item of business, that if members of the public were present during the transaction of that item, exempt information⁶ would be disclosed to them⁷;
- 573 (3) a resolution has been passed, by the decision making body concerned, excluding the public during an item of business where it is likely, in view of the nature of the item, that if members of the public were present during the transaction of that item, the advice of a political adviser or assistant⁸ would be disclosed to them⁹; or
- 574 (4) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or to prevent misbehaviour at a meeting¹⁰.

However, an exclusion of the public under head (1), head (2) or head (3) above is to apply only to the part or parts of the meeting during which it is likely that confidential information, exempt information or the advice of a political adviser or assistant would be disclosed¹¹.

1 The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272. As to the situation regarding Wales see PARA 645.

2 As to the meaning of 'decision making body' see PARA 669 note 1.

3 As to executive arrangements see PARA 303 et seq.

4 As to meanings of 'confidential information' and 'information' see PARA 642.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(1)(a).

6 As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2).

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(1)(b). A resolution under reg 21(1)(b) must identify the proceedings, or part of the proceedings, to which it applies, and state by reference to the descriptions in the Local Government Act 1972 s 100A, Sch 12A (see PARA 643) the description of exempt information giving rise to the exclusion of the public: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(2).

8 As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(1)(c).

10 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(1)(d).

11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(3).

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647. Powers to exclude the public.

A body to which the requirement to admit the public to meetings applies¹ may by resolution exclude the public from a meeting, whether during the whole or part of the proceedings², whenever publicity would be prejudicial to the public interest³ by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings⁴. Where such a resolution is passed, the Public Bodies (Admission to Meetings) Act 1960 does not require the meeting to be open to the public during proceedings to which the resolution applies⁵. A body may⁶ treat the need to receive or consider recommendations or advice from sources other than members, committees or sub-committees⁷ of the body as a special reason why publicity would be prejudicial to the public interest, without regard to the subject or purport of the recommendations or advice⁸.

Where a meeting of a body is required by the Public Bodies (Admission to Meetings) Act 1960 to be open to the public during the proceedings or any part of them, the body does not have the power to exclude members of the public from the meeting while the meeting is open to the public⁹. The requirement to keep the meeting open to the public is without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting¹⁰.

1 As to the bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies see PARA 641. As to the requirement to admit the public to meetings see PARA 641.

2 When a body to which the Public Bodies (Admission to Meetings) Act 1960 applies resolves itself into committee, the proceedings in committee are for the purposes of the Public Bodies (Admission to Meetings) Act 1960 treated as forming part of the proceedings of the body at the meeting: s 1(6).

3 'Public interest' is not defined, but, in resolving whether to exclude, the council or committee must consider not only the confidential nature of the matter but also whether publicity would be contrary to the public interest: *Peachey Property Corpn Ltd v Paddington Borough Council* [1964] RVR 487, 108 Sol Jo 499, CA.

4 Public Bodies (Admission to Meetings) Act 1960 s 1(2). See also *R v Liverpool City Council, ex p Liverpool Taxi Fleet Operators' Association* [1975] 1 All ER 379, [1975] 1 WLR 701, DC (in this case more members of the public had attended than could be accommodated in the meeting room, and the committee decided to exclude the public for this reason, on the ground that the business of the committee could not be carried out satisfactorily, and because it was considered that applications for licences should be heard in the absence of applicants making competing applications; the requirement to state the reasons for exclusion in the resolution is discretionary and not mandatory, and accordingly the omission to mention the second reason in the resolution did not have the effect of invalidating it automatically). Where the Public Bodies (Admission to Meetings) Act 1960 s 1 applies to a committee by virtue of s 1(2), then, for the purposes of s 1(4)(c), premises belonging to the local authority or one or more of the local authorities which appointed the committee are treated as belonging to the committee: Local Government Act 1972 s 100(3).

5 Public Bodies (Admission to Meetings) Act 1960 s 1(2).

6 Ie under the Public Bodies (Admission to Meetings) Act 1960 s 1(2): see the text and notes 1-4.

7 As to committees and sub-committees see PARA 371 et seq.

8 Public Bodies (Admission to Meetings) Act 1960 s 1(3). However, these express provisions must not be taken to restrict the generality of s 1(2) (see the text and notes 1-4) in relation to other cases (including in particular cases where the report of a committee or sub-committee of the body is of a confidential nature): s 1(3).

9 See the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(c).

10 Public Bodies (Admission to Meetings) Act 1960 s 1(8). As to the power to exclude members of the public where they are likely to disrupt the meeting see *R v Brent Health Authority, ex p Francis* [1985] QB 869, [1985] 1 All ER 74. See also *R v D'Oyly* (1840) 12 Ad & El 139; *Hawkins v Muff* (1911) 2 Glen's Local Government Case Law 151. As to disturbances at public meetings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 584.

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(B) WRITTEN RECORDS OF MEETINGS

648. Records of meetings.

A written record must be kept of prescribed decisions¹ made at meetings of local authority executives², or committees of such executives, which are held in private³. A written record must also be kept of prescribed decisions made by individual members of local authority executives⁴. The written records must include reasons for the decisions to which they relate⁵, and together with such reports, background papers or other documents as may be prescribed, must be made available to members of the public in accordance with regulations made by the Secretary of State or the Welsh Ministers⁶.

The Secretary of State or the Welsh Ministers may by regulations make provision⁷: (1) for or in connection with requiring written records to be kept of decisions made at specific meetings⁸ of joint committees⁹, or sub-committees of such committees which are held in private¹⁰; (2) for or in connection with requiring written records falling within head (1) above to include reasons¹¹; (3) for or in connection with requiring any such written records to be made available to members of the public¹²; (4) for or in connection with requiring documents connected with decisions to which any such written records relate to be made available to members of the public¹³.

The Secretary of State or the Welsh Ministers may by regulations make provision:

- 575 (a) with respect to the information which is to be included in written records required under the above provisions¹⁴;
- 576 (b) with respect to the reasons which are to be included in any such written records¹⁵;
- 577 (c) with respect to the persons who are to produce, keep or make available any such written records¹⁶;
- 578 (d) for or in connection with requiring any such written records to be made available to members of local authorities¹⁷ or to overview and scrutiny committees or sub-committees¹⁸;
- 579 (e) for or in connection with requiring documents connected with decisions to which any such written records relate to be made available to members of local authorities or to overview and scrutiny committees or sub-committees¹⁹;
- 580 (f) for or in connection with requiring information to be made available by electronic means²⁰;

- 581 (g) for or in connection with conferring rights on members of the public, members of local authorities or overview and scrutiny committees or sub-committees in relation to records or documents²¹;
- 582 (h) for or in connection with the creation of offences in respect of any rights or requirements conferred or imposed by virtue of this provision²².

1 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State or the Welsh Ministers: Local Government Act 2000 ss 22(13), 106(a). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to executive arrangements see PARA 303 et seq. In relation to Wales, 'local authority' means a county council or county borough council which is operating executive arrangements in accordance with the Local Government Act 2000: Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802, reg 2. In relation to England, 'local authority' means a county council, a district council or a London borough council which is operating executive arrangements: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2.

3 Local Government Act 2000 s 22(3). For the purposes of s 22(3), executive decisions made by decision making bodies are prescribed decisions: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(4). As to the meaning of 'executive decision' see PARA 669. As to the meaning of 'decision making body' see PARA 669 note 1.

4 Local Government Act 2000 s 22(4). For the purposes of s 22(4), executive decisions made by individual members of local authority executives are prescribed decisions: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(3); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(5).

5 Local Government Act 2000 s 22(5).

6 Local Government Act 2000 s 22(6). Regulations under s 22(6) may make provision for or in connection with preventing the whole or part of any record or document containing prescribed information from being made available to members of the public: s 22(7).

As to the regulations that have been made under s 22 see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272 (amended by SI 2002/716; SI 2006/69); the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290 (amended by SI 2002/1385; SI 2007/951); and PARA 669 et seq.

7 As to the regulations that have been made under the Local Government Act 2000 s 22 see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272 (amended by SI 2002/719; SI 2006/69); the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290 (amended by SI 2002/1385 and SI 2007/951); and PARA 669 et seq.

8 ie meetings to which by virtue of regulations made under the Local Government Act 2000 s 22(8)(a) (see PARA 644) are held in private.

9 As to the meaning of 'joint committee' see PARA 644 note 7.

10 Local Government Act 2000 s 22(8)(b).

11 Local Government Act 2000 s 22(8)(c).

12 Local Government Act 2000 s 22(8)(d).

13 Local Government Act 2000 s 22(8)(e).

14 Local Government Act 2000 s 22(9)(c).

15 Local Government Act 2000 s 22(9)(d).

16 Local Government Act 2000 s 22(9)(e).

17 As to the meaning of 'local authority' see PARA 23.

- 18 Local Government Act 2000 s 22(9)(f). As to overview and scrutiny committees see PARA 342 et seq.
- 19 Local Government Act 2000 s 22(9)(g).
- 20 Local Government Act 2000 s 22(9)(h).
- 21 Local Government Act 2000 s 22(9)(i).
- 22 Local Government Act 2000 s 22(9)(j).

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(C) PUBLICITY

649. Public notices of meetings open to the public.

Where a meeting of a body¹ is required by the Public Bodies (Admission to Meetings) Act 1960 to be open to the public during the proceedings or any part of them², public notice of the time and place of the meeting must be given by posting it at the offices of the body or, if the body has no offices, then in some central and conspicuous place in the area with which the body is concerned, three clear days³ at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened⁴.

- 1 As to the bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies see PARA 641.
- 2 As to the requirement to admit the public to meetings see PARA 641. As to the power to exclude the public from meetings see PARA 647. As to the meaning of 'proceedings' see PARA 647 note 2.
- 3 As to the meaning of 'three clear days' see PARA 627 note 3.
- 4 Public Bodies (Admission to Meetings) Act 1960 s 1(4)(a). As to notice of principal council meetings see PARA 627; as to notice of meetings of parish or community councils see PARA 633; and as to notice of parish or community meetings see PARA 636.

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650. Press and publication of reports of meetings.

Where a meeting of a body¹ is required by the Public Bodies (Admission to Meetings) Act 1960 to be open to the public during the proceedings or any part of them², there must, on request and on payment of postage or other necessary charge for transmission, be supplied for the benefit of any newspaper³ a copy of the agenda for the meeting as supplied to members of the body (but excluding, if thought fit, any item during which the meeting is likely not to be open to the public) together with such further statements or particulars, if any, as are necessary to indicate the nature of the items included or, if thought fit in the case of any item, with copies of any reports or other documents supplied to members of the body in connection with the item⁴. Where a meeting of a body is required to be open to the public during the proceedings or any

part of them, duly accredited representatives of newspapers attending for the purpose of reporting the proceedings for those newspapers must so far as practicable be afforded reasonable facilities for taking their report, and, unless the meeting is held in premises not belonging to the body⁵ or not on the telephone, for telephoning the report at their own expense while the meeting is open to the public⁶. However, nothing in these provisions requires a body to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings, whether at the time or later, or the making of any oral report on any proceedings as they take place⁷.

Publication of a fair and accurate report of the proceedings of a meeting is privileged unless the publication is proved to be made with malice⁸.

1 As to the bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies see PARA 641.

2 As to the requirement to admit the public to meetings see PARA 641. As to the power to exclude the public from meetings see PARA 647. As to the meaning of 'proceedings' see PARA 647 note 2.

3 Any reference in the Public Bodies (Admission to Meetings) Act 1960 s 1 to a 'newspaper' applies also to a news agency which systematically carries on the business of selling and supplying reports or information to newspapers, and to any organisation which is systematically engaged in collecting news for sound or television broadcasts, or for programme services within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 16; **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328) other than sound or television broadcasting services: Public Bodies (Admission to Meetings) Act 1960 s 1(7) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 5). As to privileges of the press see **PRESS, PRINTING AND PUBLISHING** vol 36(2) (Reissue) PARA 458 et seq.

4 Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b). As to copyright in agenda and other papers see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 14 et seq.

5 In the case of a committee of a body to which the Public Bodies (Admission to Meetings) Act 1960 applies, the premises referred to in the text are treated as belonging to the committee: s 2(1). See PARA 641 note 1.

Where s 1 (see PARA 641) applies to a committee by virtue of the Local Government Act 1972 s 100(2) (see PARA 641), then premises referred to in the text belonging to the local authority or one or more of the local authorities which appointed the committee are treated as belonging to the committee: s 100(3).

6 See the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(c).

7 Public Bodies (Admission to Meetings) Act 1960 s 1(7).

8 Public Bodies (Admission to Meetings) Act 1960 s 1(5). As to privileged reports see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 125 et seq. See also *Derbyshire County Council v Times Newspaper Ltd* [1993] AC 534, [1993] 1 All ER 1011, HL.

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651. Publication of defamatory matter in agenda etc.

Where a meeting of a body¹ is required by the Public Bodies (Admission to Meetings) Act 1960 to be open to the public during the proceedings or any part of them², and there is supplied to a member of the public attending the meeting, or there is supplied for the benefit of a newspaper³, any such copy of the agenda⁴, with or without further statements or particulars for the purpose of indicating the nature of any item included in the agenda, the publication thereby of any defamatory⁵ matter contained in the agenda or in the further statements or particulars is privileged⁶, unless the publication is proved to be made with malice⁷.

- 1 As to the bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies see PARA 641.
- 2 As to the requirement to admit the public to meetings see PARA 641. As to the power to exclude the public from meetings see PARA 647. As to the meaning of 'proceedings' see PARA 647 note 2.
- 3 le in pursuance of the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b): see PARA 650. As to the meaning of 'newspaper' see PARA 650 note 3.
- 4 le under the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b): see PARA 650.
- 5 As to the law of defamation generally see **LIBEL AND SLANDER**.
- 6 As to privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 94 et seq.
- 7 Public Bodies (Admission to Meetings) Act 1960 s 1(5).

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(D) INSPECTION OF DOCUMENTS

(a) Members of the Authority

652. Rights of access to documents for members of local authorities.

Any document¹ which is in the possession, or under the control, of the executive of a local authority² and contains material relating to any business to be transacted at a public meeting³ is to be available for inspection by any member of the local authority⁴; and any document which is in the possession, or under the control, of the executive of a local authority⁵, and contains material relating to any business transacted at a private meeting⁶, any decision made by an individual member in accordance with executive arrangements or, in relation to England, any key decision⁷ made by an officer in accordance with executive arrangements⁸, is to be available for inspection by any member of the local authority when the meeting concludes or, where an executive decision⁹ is made by an individual member or a key decision is made by an officer, immediately after the decision has been made¹⁰.

Where it appears to the proper officer¹¹ that compliance with these provisions in relation to a document or part of a document would involve the disclosure of certain exempt information¹², or would involve the disclosure of advice provided by a political adviser or assistant¹³, these provisions do not apply as regards that document or part¹⁴.

1 'Document' means any report or background papers, other than those only in a draft form, taken into consideration in relation to an executive decision: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

2 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to executive arrangements see PARA 303 et seq.

3 As to the meaning of 'public meeting' see PARA 674 note 3.

4 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(1) (amended by SI 2006/69); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(1) (amended by SI 2007/951). The rights conferred by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(1) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(1), (2) are in addition to any other rights that a member of a local authority may have: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(5); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(4). See also PARA 221.

5 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(2)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(1)(a).

6 As to the meaning of 'private meeting' see PARA 678 note 2.

7 As to the meaning of 'key decision' see PARA 670.

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(2)(b); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(1)(b).

9 As to the meaning of 'executive decision' see PARA 669.

10 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(2) (amended by SI 2006/69); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(1) (amended by SI 2007/951). See note 4.

11 As to the proper officer see PARA 431.

12 Is any exempt information falling within any of the provisions of the Local Government Act 1972 s 100A, Sch 12A, Pts 1, 4: see PARA 643. As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2 and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

13 'Political adviser or assistant' means a person appointed pursuant to the Local Government and Housing Act 1989 s 9 (see PARAS 432-433) or regulations made under the Local Government Act 2000 s 23, Sch 1 para 6 (see PARA 328): see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

14 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(3), (4) (reg 17(3) substituted by SI 2006/69); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(2), (3) (reg 10(2) substituted by SI 2007/951). However, despite the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(3) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(2) the document is required to be available for inspection if the information is information of a description for the time being falling within the Local Government Act 1972 Sch 12A para 3 or para 14 (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract) or para 6 or para 17: see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 17(3A) (added by SI 2006/69); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 10(2A) (added by SI 2007/951).

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653. Rights of access to documents for members of overview and scrutiny committees.

A member of an overview and scrutiny committee¹ of a local authority is entitled to a copy of any document² which: (1) is in the possession or under the control of the executive³ of that authority⁴; and (2) contains material relating to any business that has been transacted at a private meeting⁵ or a public meeting⁶ of a decision making body⁷ of that authority, any decision that has been made by an individual member of that executive in accordance with executive arrangements or, in relation to England any key decision⁸ that has been made by an officer of the authority in accordance with executive arrangements⁹.

No member of an overview and scrutiny committee is entitled to a copy of such document or part of a document as contains exempt¹⁰ or confidential information¹¹ unless that information is relevant to: (a) an action or decision that he is reviewing or scrutinising or which is relevant to any review contained in any programme of work of such a committee or sub-committee of the committee¹²; or (b) a document or part of a document containing advice provided by a political adviser or assistant¹³.

1 In relation to England a 'relevant overview and scrutiny committee' means an overview and scrutiny committee of the relevant local authority which has terms of reference including the power to review or scrutinise decisions made, or other actions taken, in connection with the discharge of the function to which the decision relates: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2. In relation to Wales an 'overview and scrutiny committee' means a committee appointed in pursuance of the Local Government Act 2000 s 21: Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2. As to overview and scrutiny committees see PARA 342 et seq.

2 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. For these purposes 'copy', in relation to a copy, includes a copy made from a copy: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2. As to the meaning of 'document' see PARA 652 note 1.

3 As to executive arrangements see PARA 303 et seq.

4 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 18(1)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 11(1)(a).

5 As to the meaning of 'private meeting' see PARA 678 note 2.

6 As to the meaning of 'public meeting' see PARA 674 note 3.

7 As to the meaning of 'decision making body' see PARA 669 note 1.

8 As to the meaning of 'key decision' see PARA 670.

9 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 18(1)(b); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 11(1)(b). See also PARA 221.

10 As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2 and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

11 As to the meaning of 'confidential information' see PARA 642.

12 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 18(2)(a) (reg 18(2) added by SI 2002/716); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 11(2).

13 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 18(2)(b) (as added: see note 12); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 11(3).

As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

Nothing in reg 11 permits the disclosure of confidential or exempt information by a member of an overview and scrutiny committee other than may be authorised by any other enactment: reg 11(4).

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(b) Members of the Public

654. Information to be made available to the public.

The Secretary of State or the Welsh Ministers¹ may by regulations² make provision for or in connection with requiring prescribed³ information about prescribed decisions made in connection with the discharge of functions which are the responsibility of a local authority⁴ executive to be made available to members of the public or members of the authority⁵.

The Secretary of State may by regulations make provision in relation to the publication by executives of local authorities in England under certain provisions⁶, of responses to reports or recommendations of overview and scrutiny committees and sub-committees of such committees or the provision by such executives of copies of such responses, which apply or reproduce (with or without modifications) certain provisions⁷.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to the regulations that have been made under the Local Government Act 2000 s 22 see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272 (amended by SI 2002/719; SI 2006/69); the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290 (amended by SI 2002/1385 and SI 2007/951); and PARA 669 et seq.

3 As to the meaning of 'prescribed' see PARA 648 note 1.

4 As to the meaning of 'local authority' see PARA 23.

5 Local Government Act 2000 s 22(10). The provision which may be made under s 22(10) includes provision: (1) requiring prescribed information to be made available in advance of the prescribed decisions mentioned in that provision; (2) as to the way or form in which prescribed information is to be made available: s 22(11).

6 Local Government Act 2000 s 22(12A)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 122(2)).

7 Local Government Act 2000 s 22(12A)(b) (as added: see note 6).

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655. Requirement for public inspection prior to meeting.

In relation to England, an item of business is only to be considered at a public meeting¹ where a copy² of the agenda or part of the agenda, including the item, has been available as required³ for inspection by the public for at least five clear days before the meeting⁴ or, where the meeting is convened at shorter notice⁵, a copy of the agenda including the item has been available for inspection by the public from the time that the meeting was convened⁶.

In relation to Wales, an item of business may not be considered at a meeting unless a copy of the agenda including the item (or a copy of the item) is open to inspection by members of the public⁷ for at least three clear days before the meeting or where the meeting is convened at shorter notice, from the time the meeting is convened⁸, or by reason of special circumstances, which must be specified in the minutes, the chairperson of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency⁹.

1 As to the meaning of 'public meeting' see PARA 674 note 3.

2 As to the meaning of 'copy' see PARA 653 note 2.

3 Ie by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11: see PARA 656.

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 10(a) (amended by SI 2002/716).

5 Ie in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15 (see PARA 673) or reg 16 (see PARA 677).

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 10(b).

7 Ie in pursuance of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(1) (see PARA 658).

8 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(4)(a) (reg 5(4) substituted by SI 2002/1385).

9 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(4)(b) (as substituted: see note 8).

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656. Access to agenda and connected reports.

A copy of the agenda and every report¹ for a public meeting² is to be available for inspection by the public at the specified offices³. However, if the proper officer⁴ thinks fit, there may be excluded from the copy of any report so provided the whole, or any part, of the report which relates only to the transaction of an item of business during which, in his opinion, the meeting is likely not to be open to the public⁵.

Any document which is required to be available for inspection by the public is to be available for such inspection for at least five clear days in relation to England, and three clear working days in relation to Wales, before the meeting, except that⁶: (1) where the meeting is convened at shorter notice⁷, a copy of the agenda and associated reports is to be available for inspection at the time the meeting is convened⁸; and (2) where an item which would be available for

inspection by the public is added to the agenda, a copy of the revised agenda, and of any report relating to the item for consideration at the meeting, is to be available for inspection by the public when the item is added to the agenda⁹. Where the whole or any part of a report for a public meeting is not available for inspection by the public:

- 583 (a) every copy of the whole report or of the part of the report, as the case may be, must be marked 'not for publication'¹⁰; and
- 584 (b) there must be stated on every copy of the whole or the part of the report: (i) in relation to England (A) that it contains confidential information¹¹; (B) the description of exempt information¹² by virtue of which the decision making body discharging the executive function¹³ is likely to exclude the public during the item to which the report relates¹⁴; or (c) that the report or the part of the report contains the advice of a political adviser or assistant¹⁵ as the case may be¹⁶; or (ii) in relation to Wales, the description of exempt information¹⁷ by virtue of which the executive or, as the case may be, the committee, is likely to exclude the public during the item to which the report relates¹⁸.

Except during any part of a public meeting during which the public are excluded, the local authority must make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting¹⁹.

A local authority must, following any request on behalf of a newspaper²⁰ and on payment being made of postage charges or any other necessary charge for transmission, supply to the newspaper²¹ a copy of the agenda for a public meeting and a copy of each of the reports for consideration at the meeting²², such further statements or particulars (if any) as are necessary to indicate the nature of the items contained in the agenda²³ and, if the proper officer thinks fit in the case of any item, a copy of any other document supplied to members of the executive in connection with the item²⁴.

1 This is subject to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(2) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(2). As to the meaning of 'copy' see PARA 653 note 2. As to the meaning of 'report' see PARA 675 note 5.

2 As to the meaning of 'public meeting' see PARA 674 note 3.

3 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(1); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(1). In relation to England, the specified offices are the offices of the local authority and the copy of the agenda and the report are to be made available when they are made available to the members of the executive or decision making body responsible for making the decision to which they relate: see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(1). As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to executive members see PARA 320 note 5. As to executive arrangements see PARA 303 et seq. As to the meaning of 'decision making body' see PARA 669 note 1. In relation to Wales the specified offices are the principal offices of the authority in accordance with the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3). As to the inspection of documents see PARA 658. As to offences see PARA 660. As to the requirement for public inspection prior to a meeting see PARA 655.

4 As to the proper officer see PARA 431.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(2); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(2).

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3) (amended by SI 2002/716); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3). As to the meaning of 'document' see PARA 652 note 1.

7 le, in relation to England, in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15 (see PARA 673) or reg 16 (see PARA 677).

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3)(a); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3)(a).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3)(b); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3)(b). However, nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3) requires a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision making body concerned (Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(4)) and nothing in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3) requires a copy of the agenda, item or report to be available for inspection by the public until copies are available to members of the executive, or as the case may be, the committee (Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(3)).

10 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(5)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(5)(a).

11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(5)(b)(i). As to the meaning of 'confidential information' see PARA 642.

12 le by reference to the descriptions in the Local Government Act 1972 s 100A, Sch 12A: see PARAS 643, 661. As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2 and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

13 As to the discharge of functions see PARA 369 et seq. As to the meaning of 'decision making body' see PARA 670 note 1.

14 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(5)(b)(ii).

15 As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

16 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(5)(b)(iii).

17 See note 12.

18 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(5)(b).

19 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(6); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(6). The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 11(3) (see the text and notes 7-9) apply in relation to copies of reports provided pursuant to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(6) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(6) as they apply in relation to copies of reports provided pursuant to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(1) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(1) (see the text and notes 1-3): Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(8); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(8).

20 For these purposes, 'newspaper' includes: (1) a news agency which systematically carries on the business of selling and supplying reports or information to newspapers; and (2) any organisation which is systematically engaged in collecting news for sound or television broadcasts or for inclusion in programmes to be included in any programme service within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS AND**

BROADCASTING vol 45(1) (2005 Reissue) PARA 328) other than a sound or television broadcasting service within the meaning of Pt III (ss 83-126) or Pt I (ss 1-71) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARAS 262, 447) respectively; or (3) in relation to Wales, for use in electronic or any other format to provide news to the public by means of the Internet: see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

21 In relation to England this is subject to the provisions relating to confidential information under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21: see PARA 646.

22 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(7)(a); and Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(7)(a).

23 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(7)(b); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(7)(b).

24 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(7)(c); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(7)(c). The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(3) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(7) (see the text and notes 20-23) apply in relation to copies of reports provided pursuant to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(7) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(7) as they apply in relation to copies of reports provided pursuant to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(1) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(1) (see the text and notes 1-3): Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(8); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5(8).

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657. Disclosure of documents to the public in England.

Nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000¹ authorises or requires a local authority² to disclose to the public or make available for public inspection any document³ or part of any document if, in the opinion of the proper officer⁴, that document contains or may contain confidential information⁵. Nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 requires a local authority to disclose to the public or make available for public inspection any document or part of a document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political adviser or assistant⁶.

Where a member of an executive or an officer makes an executive decision⁷ in accordance with executive arrangements, nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000: (1) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the documents contain confidential information⁸; (2) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure would, in the opinion of the member or officer making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant⁹.

Nothing in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 requires a decision making body or decision maker¹⁰ to permit the taking of any photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place¹¹.

1 le the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272.

2 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

3 As to the meaning of 'document' see PARA 652 note 1.

4 As to the proper officer see PARA 431.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(4)(a) (reg 21(4), (5) substituted by SI 2002/716). As to the meanings of 'confidential information' and 'information' see PARA 642.

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(4)(a) (substituted by SI 2002/716). As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2). As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

7 As to the meaning of 'executive decision' see PARA 669.

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(5)(a) (as substituted: see note 5).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(5)(b) (as substituted: see note 5).

10 As to the meanings of 'decision making body' and 'decision maker' see PARA 669 note 1.

11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(6).

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658. Inspection of documents following decisions.

After a meeting of a decision making body¹ at which an executive decision² has been made, or after an individual member has made an executive decision or, in relation to England, after an officer has made a key decision³, the proper officer⁴ must ensure⁵ that a copy⁶ of any records prepared in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000⁷ or any written statements prepared in accordance with the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁸ and that a copy of any report⁹ considered at the meeting or, as the case may be, considered by the individual member or, in England, officer and relevant to a decision so recorded or, where only part of the report is relevant to such a decision, that part, is available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the relevant local authority¹⁰.

Where a request on behalf of a newspaper¹¹ is made for a copy of any of the documents¹² available for public inspection, those documents must be supplied for the benefit of the newspaper by the local authority on payment by the newspaper to the local authority of postage, copying or other necessary charge for transmission¹³.

When a copy of the whole or part of a report is made available for inspection by members of the public¹⁴, the following documents must also be made available¹⁵ for inspection by the public at the offices of the relevant local authority: (1) a copy of a list compiled by the proper officer of the background papers to the report or part of the report¹⁶; and (2) at least one copy of each of the documents included in that list¹⁷.

1 As to the meaning of 'decision making body' see PARA 669 note 1.

2 As to the meaning of 'executive decision' see PARA 669. As to executive arrangements see PARA 303 et seq.

3 As to the meaning of 'key decision' see PARA 670.

4 As to the proper officer see PARA 431.

5 Ie subject to the provisions relating to confidential information under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21 or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 4: see PARA 645. Nothing in the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8 is to be taken to authorise or require a proper officer to disclose exempt or confidential information: reg 8(3). As to the meaning of 'confidential information' see PARA 642.

6 As to the meaning of 'copy' see PARA 653 note 2.

7 Ie in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 3, 4 (see PARAS 678, 680-681).

8 Ie in accordance with the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6 or 7 (see PARAS 648, 669, 676, 679-680).

9 As to the meaning of 'report' see PARA 675 note 5.

10 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5(1); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8(1). For these purposes, 'relevant local authority' means the local authority whose executive is responsible for the discharge of the function to which the executive decision relates: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2. As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to the discharge of functions see PARA 369 et seq. As to the inspection of documents see PARA 659. As to offences see PARA 660.

11 As to the meaning of 'newspaper' see PARA 675 note 18.

12 As to the meaning of 'document' see PARA 652 note 1.

13 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5(2); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8(2).

14 Ie in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5 (see the text and notes 1-13) or reg 11 (see PARA 656) or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8.

15 Ie subject to the provisions relating to confidential information under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21 or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8.

16 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 6(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 9(1). 'Background papers', in relation to a report, means those documents, other than published works, that relate to the subject matter of the report and in the opinion of the proper officer disclose any facts or matters on which the report or an important part of the report is based and were relied on to a material extent in preparing the report: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

17 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 6(b); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 9(2).

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659. Inspection of documents at the offices of the local authority.

Any document¹ required to be available for inspection by members of the public² is to be available for inspection at all reasonable hours at the offices of the local authority³, and, in the case of background papers⁴, upon payment by the person seeking to inspect the documents of any reasonable fee required by the local authority⁵. Where a document is to be available for inspection by a person⁶, he may make a copy⁷ of the whole or part of the document⁸ or require the person having custody of the document to supply him with a copy of the whole or part of the document⁹ upon payment by him of any reasonable fee required by the local authority¹⁰. However, this does not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is the local authority, nothing done pursuant to these provisions¹¹ constitutes an infringement of the copyright¹².

Where any document required to be open to inspection by the public is supplied to, or is available for inspection, by members of the public¹³, or is supplied for the benefit of any newspaper¹⁴, the publication thereby of any defamatory matter¹⁵ contained in the document is privileged¹⁶ unless the publication is proved to be made with malice¹⁷.

Any written record of an executive decision¹⁸, or any report required to be available for inspection by the members of the public¹⁹, is to be retained by the local authority and made available for inspection by the public for a period of at least six years beginning on the date on which the decision to which the record or report relates was made²⁰. Any background papers required to be available for inspection by members of the public²¹ are to be retained by the local authority and to be available for inspection by the public for a period of at least four years beginning on the date on which the decision to which the background papers relate was made²².

The rights conferred on any person by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 to inspect, copy or be supplied with documents are in addition to any other rights that he may have²³.

1 As to the meaning of 'document' see PARA 652 note 1.

2 Ie under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 5, 6 (see PARA 658) or reg 11 (PARA 656) or under any provisions of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290.

3 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(1)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(1)(a). As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

4 Ie documents available for inspection pursuant to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 6 (see PARA 658) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 9 (see PARA 670).

5 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(1)(b); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(1)(b).

6 Ie under any of the provisions of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290.

7 As to the meaning of 'copy' see PARA 653 note 2.

8 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(2)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(2)(a).

9 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(2)(b); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(2)(b).

10 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(2); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(2).

11 Ie the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(2) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(2): see the text and notes 6-10.

12 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(3); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(3). As to copyright in agenda and other papers see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 144 et seq.

13 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(4)(a); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(4)(a).

14 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(4)(b) (amended by SI 2002/716); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(4)(b). The reference in the text to the supply of documents to newspapers is a reference to the supply of documents to newspapers pursuant to reg 5(2) or 11(7): see PARA 656. As to the meaning of 'newspaper' see PARA 675 note 18.

15 As to the law of defamation generally see **LIBEL AND SLANDER**.

16 As to privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 94 et seq.

17 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(4); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(4).

18 As to the meaning of 'executive decision' see PARA 669.

19 Ie under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5 or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 8: see PARA 658.

20 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(5); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(5).

21 Ie under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 6 or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 9: see PARA 658.

22 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(6); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(6).

23 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22(7); and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(7).

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660. Offences.

A person who has custody of a document¹ which is required to be available for inspection by members of the public² commits an offence³ if, without reasonable excuse: (1) he intentionally obstructs any person exercising a right conferred under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000⁴ or the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁵ to inspect, or to make a copy⁶ of the whole or part of the document⁷; or (2) he refuses to supply⁸ a copy of the whole or part of the document⁹.

1 As to the meaning of 'document' see PARA 652 note 1.

2 Ie, in relation to England, under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5, 6 (see PARA 658) or reg 11 (see PARA 656) or, in relation to Wales, under the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 5, 8 or 9 (see PARAS 656, 658).

3 A person who commits such an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 23(2); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 14(2). As to the standard scale see PARA 105 note 7.

4 Ie the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272.

5 Ie the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 14.

6 As to the meaning of 'copy' see PARA 653 note 2.

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 23(1)(a); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 14(a).

8 Ie, in accordance with, in relation to England, the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 5(2), 11(7) or 22(2) (see PARAS 656, 659) or, in relation to Wales, the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 13(2) (see PARA 659).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 23(1)(b) (amended by SI 2002/716); Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 14(1)(b).

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B MEETINGS OF THE AUTHORITY

(A) ADMISSION

661. Admission to meetings of principal councils.

A meeting of a principal council¹ is open to the public, except to the extent that they are excluded, whether during the whole or part of the proceedings, by resolution². The public are to be excluded from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information³ would be disclosed to them in breach of the obligation of confidence⁴. A principal council may by resolution⁵ exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information⁶.

Public notice of the time and place of the meeting must be given by posting it at the offices of the council five clear days, in relation to England, and three clear days, in relation to Wales⁷ at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened⁸.

While the meeting is open to the public, the council does not have power to exclude members of the public from the meeting⁹. Duly accredited representatives of newspapers¹⁰ attending the meeting for the purpose of reporting the proceedings for those newspapers must, so far as practicable, be afforded reasonable facilities for taking their report and, unless the meeting is held in premises not belonging to the council or not on the telephone, for telephoning the report at their own expense¹¹. However, a principal council is not required to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings, whether at the time or later, or the making of any oral report on any proceedings as they take place¹².

These provisions are without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting¹³.

1 Any reference in the Local Government Act 1972 Pt VA (ss 100A-100K) (see the text and notes 2-13; and PARA 662 et seq) to a meeting is a reference to a meeting held after 1 April 1986: s 100K(2) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1)). For these purposes, a 'principal council' includes a reference to: (1) a joint authority; (2) a joint waste authority; (3) the London Fire and Emergency Planning Authority; (4) the Common Council of the City of London; (5) the Broads Authority; (6) a national park authority; (7) a joint board or joint committee falling within the Local Government Act 1972 s 100J(2); (8) a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139); (9) the Metropolitan Police Authority; (10) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; and (11) the Homes and Communities Agency so far as it is exercising functions conferred on it in relation to a designated area by virtue of a designation order: Local Government Act 1972 ss 100J(1), 100K(1) (both as so added by Local Government Act (Access to Information) Act 1985, s 1(1); and the Local Government Act 1972 s 100J(1) amended by the Education Reform Act 1988 s 237, Sch 13, Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(5);

the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 9(2); the Environment Act 1995 s 63, Sch 7 para 12(2)(a); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 4(2); the Greater London Authority Act 1999 ss 313(1), (2), 331(1), (2); the Criminal Justice and Police Act 2001 ss 128(1), 137, Sch 6, Pt 2, paras 22, 26(a), Sch 7, Pt 5(1); the Fire and Rescue Services Act 2004 s 53(1), Sch 1 paras 38, 39(1), (2); the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, Pt 1, paras 1, 8(a); and the Housing and Regeneration Act 2008 s 56, Sch 8 paras 14, 15(1), (2)). As to the meaning of 'principal council' generally see PARA 23. As to areas and authorities in England see PARA 24 et seq; and as to areas and authorities in Wales see PARA 37 et seq. As to joint authorities see PARA 47. As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) PARA 17; **LONDON GOVERNMENT**. As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155; and as to fire and rescue services see **FIRE SERVICES**. 'Designated area' means an area designated by a designation order and 'designation order' means an order under the Housing and Regeneration Act 2008 s 13: s 13(5) applied by the Local Government Act 1972 s 100J(4B) (added by the Housing and Regeneration Act 2008 s 56, Sch 8 paras 14, 15(1), (5)). In its application by virtue of head (11) above in relation to the Homes and Communities Agency, a reference the Local Government Act 1972 Pt VA to the offices of the council (however expressed): (a) is to be treated as a reference to such premises located within the designated area as the Homes and Communities Agency considers appropriate; and (b) in the application of s 100A(6)(a) to a case where the meeting is to be held at premises other than those mentioned in head (a) above, includes a reference to those other premises: s 100J(2A) (added by the Housing and Regeneration Act 2008 Sch 8 para 15(3)). In their application by virtue of head (11) above in relation to the Homes and Communities Agency s 100E and s 100G(1) have effect subject to modifications: see s 100J(3ZA), (3ZB) (added by the Housing and Regeneration Act 2008 Sch 8 para 15(4)).

A joint board or joint committee falls within the Local Government Act 1972 s 100J(2) if it is constituted under any enactment as a body corporate and it discharges functions of two or more principal councils; and for these purposes any body falling within s 100J(1)(a), (b), (ba), (bb) or (c) (see heads (1)-(4)) is to be treated as a principal council: s 100J(2) (as so added; amended by the Greater London Authority Act 1999 s 331(1), (3) and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, Pt 1, paras 1, 8(b)). It is submitted that, since the Local Government Act 1972 s 100J(1)(a) has been repealed, the reference to that provision in s 100J(2) should be omitted. As to joint boards see PARA 10. As to joint committees generally see PARA 380. As to the meaning of 'joint waste authority' see PARA 51.

2 See the Local Government Act 1972 s 100A(1) (as added: see note 1). Section 100A applies in relation to a committee or sub-committee of a principal council as it applies in relation to a principal council: s 100E(1) (as added: see note 1). Any reference in Pt VA to a committee or sub-committee of a principal council is a reference to: (1) a committee which is constituted under an enactment specified in s 101(9) (see PARA 370) or which is appointed by one or more principal councils under s 102 (see PARA 371); or (2) a joint committee not falling within head (1) above which is appointed or established under any enactment by two or more principal councils and is not a body corporate; or (3) the Navigation Committee of the Broads Authority; or (4) a sub-committee appointed or established under any enactment by one or more committees falling within heads (1)-(3): ss 100E(3), 100K(1) (both as added (see note 1); and s 100E(3) amended by the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(4), (5)). As to committees and sub-committees generally see PARA 371. As to joint committees see PARA 380.

3 As to the meanings of 'confidential information' and 'information' see PARA 642. As to the protection of confidential information generally see **CONFIDENCE AND DATA PROTECTION**.

4 See the Local Government Act 1972 s 100A(2) (as added: see note 1). Nothing in Pt VA is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence: s 100A(2) (as so added). As to the admission of the public to meetings of other public authorities see PARA 641 et seq.

5 A resolution under the Local Government Act 1972 s 100A(4) must identify the proceedings, or the part of the proceedings, to which it applies and state the description, in terms of s 100A, Sch 12A (see PARA 643), of the exempt information giving rise to the exclusion of the public: s 100A(5) (as added: see note 1). Where such a resolution is passed, s 100A does not require the meeting to be open to the public during proceedings to which the resolution applies: s 100A(5) (as so added). As to exempt information see PARA 643.

6 Local Government Act 1972 s 100A(4) (as added: see note 1). The reference in the text to exempt information is a reference to exempt information as defined in s 100I (see PARA 643): see s 100A(4) (as so added). See *R v Kensington and Chelsea Royal London Borough Council, ex p Stoop* [1992] 1 PLR 58, sub nom *Stoop v Kensington and Chelsea Royal London Borough Council* [1991] JPL 1129 (planning permission); *R v Wandsworth London Borough Council, ex p Darker Enterprises Ltd* (1999) 1 LGLR 601 (licensing).

7 The Secretary of State and the Welsh Ministers may by order amend the Local Government Act 1972 s 100A(6)(a) so as to substitute for each reference to three clear days such greater number of days as may be specified in the order: s 100K(3) (s 100K as added (see note 1); and s 100K(3) added by the Local Government Act 2000 s 98(1)). As to the order that has been made see the Local Authorities (Access to Meetings and

Documents) (Period of Notice) (England) Order 2002, SI 2002/715. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

8 Local Government Act 1972 s 100A(6)(a) (as added (see note 1); and amended in relation to England by SI 2002/715). In the case of a committee or sub-committee of a principal council, the Local Government Act 1972 s 100A(6)(a) is taken to have been complied with if the notice is given by posting it at the time referred to in the text at the offices of every constituent principal council and, if the meeting of the committee or sub-committee to which s 100A(6)(a) so applies is to be held at premises other than the offices of such a council, at those premises: s 100E(2)(a) (as added: see note 1).

Where s 100A(6)(a) applies to a joint authority, a joint waste authority, the London Fire and Emergency Planning Authority, the Common Council of the City of London, the Broads Authority, a national park authority, a joint board or joint committee falling within s 100J(2), a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139), the Metropolitan Police Authority or a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies, public notice of the time and place of the meeting must be given by posting it at the offices of the council and, if the meeting is to be held at premises other than those offices, at those premises, three clear days, in relation to Wales and five clear working days in relation to England, at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened: Local Government Act 1972 ss 100A(6)(a), 100J(1), (3) (ss 100A, 100J as added (see note 1); s 100J(1) (as amended) (see note 1); and s 100J(3) amended by the Education Reform Act 1988 s 237, Sch 13, Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(5); the Environment Act 1995 s 63, Sch 7 para 12(2)(b); the Greater London Authority Act 1999 ss 313(1), (3), 331(1), (4); Fire and Rescue Services Act 2004 s 53(1), Sch 1 paras 38, 39(1), (2); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, Pt 1, paras 1, 8(c)).

9 Local Government Act 1972 s 100A(6)(b) (as added: see note 1).

10 For these purposes, 'newspaper' includes: (1) a news agency which systematically carries on the business of selling and supplying reports or information to newspapers; and (2) any organisation which is systematically engaged in collecting news for sound or television broadcasts, or for inclusion in programmes to be included in any programme service, within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 16; **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 328), other than a sound or television broadcasting service: Local Government Act 1972 s 100K(1) (as added (see note 1); definition amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 16). As to privileges of the press see **PRESS, PRINTING AND PUBLISHING** vol 36(2) (Reissue) PARA 458 et seq.

11 Local Government Act 1972 s 100A(6)(c) (as added: see note 1). In the case of a committee or sub-committee of a principal council, the premises belonging to a constituent principal council referred to in the text are treated as belonging to the committee or sub-committee: s 100E(2)(b) (as added: see note 1). Any reference in Pt VA to a 'constituent principal council', in relation to a committee or sub-committee is a reference: (1) in the case of a committee, to the principal council, or any of the principal councils, of which it is a committee; and (2) in the case of a sub-committee, to any principal council which, by virtue of head (1), is a constituent principal council in relation to the committee, or any of the committees which established or appointed the sub-committee: s 100E(4) (as so added).

12 Local Government Act 1972 s 100A(7) (as added: see note 1).

13 Local Government Act 1972 s 100A(8) (as added: see note 1). See *R v Brent Health Authority, ex p Francis* [1985] QB 869, [1985] 1 All ER 74; *R v Brent London Borough, ex p Assegai* (1987) 151 LG Rev 891, Times, 18 June, DC; *R (on the application of Bennett) v Bude-Stratton Town Council* [2005] EWHC 2341 (Admin), [2005] All ER (D) 10 (Nov). As to disturbances at public meetings see also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 584.

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(B) INSPECTION OF DOCUMENTS

(a) Members of the Public

UPDATE

661 Admission to meetings of principal councils

NOTES 1, 8--Local Government Act 1972 s 100J(1)-(3) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 18.

662. Access to agenda and reports.

Copies of the agenda for a meeting of a principal council¹ and copies of any report for the meeting must be open to inspection by members of the public at the offices of the council². However, if the proper officer³ thinks fit, there may be excluded from such copies of reports the whole of any report which, or any part which, relates only to items during which, in his opinion, the meeting is likely not to be open to the public⁴. Any document which is required to be open to inspection⁵ must be so open at least three clear days, in relation to Wales, and five clear days, in relation to England,⁶ before the meeting⁷, except that: (1) where the meeting is convened at shorter notice, the copies of the agenda and reports must be open to inspection from the time the meeting is convened⁸; and (2) where an item is added to an agenda copies of which are open to inspection by the public, copies of the item, or of the revised agenda, and the copies of any report for the meeting relating to the item, must be open to inspection from the time the item is added to the agenda⁹. However, nothing in these provisions requires copies of any agenda, item or report to be open to inspection by the public until copies are available to members of the council¹⁰.

An item of business may not be considered at a meeting of a principal council unless either: (a) a copy of the agenda including the item, or a copy of the item, is open to inspection by members of the public¹¹ for at least three days, in relation to Wales, and five clear days, in relation to England,¹² before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened¹³; or (b) by reason of special circumstances, which must be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency¹⁴.

Where a meeting of a principal council is required¹⁵ to be open to the public during the proceedings or any part of them, there must be made available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting¹⁶.

There must, on request and on payment of postage or other necessary charge for transmission, be supplied for the benefit of any newspaper¹⁷: (i) a copy of the agenda for a meeting of a principal council and, subject to certain provisions¹⁸, a copy of each of the reports for the meeting¹⁹; (ii) such further statements or particulars, if any, as are necessary to indicate the nature of the items included in the agenda²⁰; and (iii) if the proper officer thinks fit in the case of any item, copies of any other documents supplied to members of the council in connection with the item²¹.

1 As to the meaning for these purposes of 'principal council' see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23. As to the meaning of 'meeting' see PARA 661 note 1.

2 Local Government Act 1972 s 100B(1) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1)). The Local Government Act 1972 s 100B applies in relation to a committee or sub-committee of a principal council as it applies in relation to a principal council: s 100E(1) (as so added). As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2. In the case of a committee or sub-committee of a principal council, the offices of any constituent principal council referred to in the text are treated as the offices of the committee or sub-committee: s 100E(2)(c) (as so added). As to the meaning of 'constituent principal council' see PARA 661 note 11.

3 As to the proper officer see PARA 431.

4 Local Government Act 1972 s 100B(2) (as added: see note 2). Where by virtue of s 100B(2) the whole or any part of a report for a meeting is not open to inspection by the public: (1) every copy of the report or of the part must be marked 'Not for publication'; and (2) there must be stated on every copy of the whole or any part of the report the description, in terms of s 100B, Sch 12A (see PARA 643), of the exempt information by virtue of which the council is likely to exclude the public during the item to which the report relates: s 100B(5) (as added: see note 2). 'Copy' in relation to any document includes a copy made from a copy: s 100K(1) (as added: see note 2). As to exempt information see PARA 643. As to the meaning of 'information' see PARA 642.

5 le by the Local Government Act 1972 s 100B(1): see the text and notes 1-2.

6 The Secretary of State or the Welsh Ministers may by order amend these provisions so as to substitute for each reference to three clear days such greater number of days as may be specified in the order: Local Government Act 1972 s 100K(3) (s 100K as added (see note 2); and s 100K(3) added by the Local Government Act 2000 s 98(1)). As to the order that has been made under this section see the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002, SI 2002/715. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

7 The day the agenda is released and the day of the meeting do not count as clear days in the calculation of the notice period: *R v Swansea City Council, ex p Elitestone Ltd* (1993) 66 P & CR 422, [1993] JPL 1019, CA.

8 Local Government Act 1972 s 100B(3)(a) (as added: see note 2).

9 Local Government Act 1972 s 100B(3)(b) (as added: see note 2).

10 Local Government Act 1972 s 100B(3) (as added: see note 2).

11 le in pursuance of the Local Government Act 1972 s 100B(1): see the text and notes 1-2.

12 The Secretary of State or the Welsh Ministers may by order amend these provisions so as to substitute for each reference to three clear days such greater number of days as may be specified in the order: Local Government Act 1972 s 100K(3) (as added: see notes 2, 6). As to the order that has been made under this section see Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002, SI 2002/715.

13 Local Government Act 1972 s 100B(4)(a) (as added (see note 2); and amended by SI 2002/715).

14 Local Government Act 1972 s 100B(4)(b) (as added: see note 2).

15 le by the Local Government Act 1972 s 100A: see PARA 661.

16 Local Government Act 1972 s 100B(6) (as added: see note 2).

17 As to the meaning of 'newspaper' see PARA 661 note 10.

18 le the Local Government Act 1972 s 100B(8); see note 21.

19 Local Government Act 1972 s 100B(7)(a) (as added: see note 2).

20 Local Government Act 1972 s 100B(7)(b) (as added: see note 2).

21 Local Government Act 1972 s 100B(7)(c) (as added: see note 2). Section 100B(2) (see the text and notes 3-4) applies in relation to copies of reports provided in pursuance of s 100B(6) (see the text and notes 15-16) or s 100B(7) as it applies in relation to copies of reports provided in pursuance of s 100B(1) (see the text and notes 1-2): s 100B(8) (as added: see note 2).

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663. Inspection of minutes and other documents after meetings.

After a meeting of a principal council¹ the following documents must be open to inspection by members of the public at the offices of the council until the expiration of the period of six years beginning with the date of the meeting²: (1) the minutes³, or a copy⁴ of the minutes, of the meeting, excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information⁵; (2) where applicable, a summary⁶; (3) a copy of the agenda for the meeting⁷; and (4) a copy of so much of any report for the meeting as relates to any item during which the meeting was open to the public⁸.

Where in consequence of the exclusion of parts of the minutes which disclose exempt information the document open to inspection⁹ does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, the proper officer¹⁰ must make a written summary of the proceedings, or the part, as the case may be, which provides such a record without disclosing the exempt information¹¹.

1 As to the meaning for these purposes of 'principal council' see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23. As to the meaning of 'meeting' see PARA 661 note 1.

2 Local Government Act 1972 s 100C(1) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1)). The Local Government Act 1972 s 100C applies in relation to a committee or sub-committee of a principal council as it applies in relation to a principal council: s 100E(1) (as so added). As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2. In the case of a committee or sub-committee of a principal council, the offices of any constituent principal council referred to in the text are treated as the offices of the committee or sub-committee: s 100E(2) (as so added). As to the meaning of 'constituent principal council' see PARA 661 note 11. As to access to agenda and connected papers see PARA 662.

3 As to minutes see PARA 625.

4 As to the meaning of 'copy' see PARA 662 note 4.

5 Local Government Act 1972 s 100C(1)(a) (as added: see note 2). As to the exclusion of the public from meetings of principal councils see PARA 661. As to exempt information see PARA 643. As to the meaning of 'information' see PARA 642.

6 Local Government Act 1972 s 100C(1)(b) (as added: see note 2). The summary referred to in the text is a summary under s 100C(2): see the text and notes 9-11.

7 Local Government Act 1972 s 100C(1)(c) (as added: see note 2).

8 Local Government Act 1972 s 100C(1)(d) (as added: see note 2).

9 Ie under the Local Government Act 1972 s 100C(1)(a): see head (1) in the text; and notes 3-5.

10 As to the proper officer see PARA 431.

11 Local Government Act 1972 s 100C(2) (as added: see note 2).

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664. Inspection of background papers.

If and so long as copies¹ of the whole or part of a report for a meeting of a principal council² are required³ to be open to inspection by members of the public⁴: (1) those copies must each include a copy of a list compiled by the proper officer⁵ of the background papers for the report or the part of the report⁶; and (2) at least one copy of each of the documents included in that list must also be open to inspection at the offices of the council⁷.

Where a copy of any of the background papers for a report is required⁸ to be open to inspection by members of the public, the copy is taken for the purposes of Part VA of the Local Government Act 1972⁹ to be so open, if arrangements exist for its production to members of the public as soon as is reasonably practicable after the making of a request to inspect the copy¹⁰.

A document which discloses exempt information¹¹ is not required to be included in the list of background papers¹². Nothing in these provisions requires or authorises the inclusion in the list of any document which, if open to inspection by the public, would disclose confidential information in breach of the obligation of confidence¹³.

1 As to the meaning of 'copy' see PARA 662 note 4.

2 As to the meaning for these purposes of 'principal council' see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23. As to the meaning of 'meeting' see PARA 661 note 1.

3 Ie by the Local Government Act 1972 s 100B(1) (see PARA 662) or s 100C(1) (see PARA 663).

4 Local Government Act 1972 s 100D(1) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1); and the Local Government Act 1972 s 100D(1) substituted by the Local Government Act 2000 s 97(1)). The Local Government Act 1972 s 100D applies in relation to a committee or sub-committee of a principal council as it applies in relation to a principal council: s 100E(1) (as so added). As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2. In the case of a committee or sub-committee of a principal council, the offices of any constituent principal council referred to in the text are treated as the offices of the committee or sub-committee: s 100E(2) (as so added). As to the meaning of 'constituent principal council' see PARA 661 note 11.

5 As to the proper officer see PARA 431.

6 Local Government Act 1972 s 100D(1)(a) (as added and substituted: see note 4). For these purposes, the background papers for a report are those documents relating to the subject matter of the report which: (1) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based; and (2) have, in his opinion, been relied on to a material extent in preparing the report: s 100D(5) (as added: see note 4). However, these do not include any published works: s 100D(5) (as added: see note 4). As to access to agenda and connected reports see PARA 662. As to the inspection of minutes and other documents after meetings see PARA 663.

7 Local Government Act 1972 s 100D(1)(b) (as added and substituted: see note 4). However, in the case of s 100C(1) (see PARA 663), these provisions do not require a copy of any document included in the list to be open to inspection after the expiration of the period of four years beginning with the date of the meeting: s 100D(2) (as added (see note 4); and amended by the Local Government Act 2000 ss 97(2), 107, Sch 6).

8 Ie required by the Local Government Act 1972 s 100D(1): see the text and notes 1-7.

9 Ie the Local Government Act 1972 Pt VA (ss 100A-100K).

10 Local Government Act 1972 s 100D(3) (as added: see note 4).

11 As to exempt information see PARA 643. As to the meaning of 'information' see PARA 642.

12 Local Government Act 1972 s 100D(4)(a) (as added: see note 4).

13 Local Government Act 1972 s 100D(4)(b) (as added: see note 4). The provisions referred to in the text are those of s 100A(2): see PARA 661.

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665. Inspection of documents generally.

A document directed by any provision of Part VA of the Local Government Act 1972¹ to be open to inspection must be so open at all reasonable hours²: (1) in the case of background documents³, upon payment of such reasonable fee as may be required for the facility⁴; and (2) in any other case, without payment⁵.

Where a document is open to inspection by a person⁶, he may, upon payment of such reasonable fee as may be required for the facility, make copies⁷ of or extracts from the document⁸, or require the person having custody of the document to supply to him a photographic copy of or extracts from the document⁹. However, this does not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is a principal council¹⁰, nothing done in pursuance of these provisions¹¹ constitutes an infringement of the copyright¹².

A person having the custody of a document which is required to be open to inspection by the public¹³ is guilty of an offence¹⁴ if, without reasonable excuse, he¹⁵: (a) intentionally obstructs any person exercising a right¹⁶ to inspect, or to make a copy of or extracts from, the document¹⁷; or (b) refuses to furnish copies to any person entitled¹⁸ to obtain them¹⁹.

Where any accessible document²⁰ for any meeting of a principal council or for any meeting of a committee or sub-committee of a principal council²¹ is supplied to, or open to inspection by, a member of the public²², or is supplied for the benefit of any newspaper²³, the publication thereby of any defamatory matter²⁴ contained in the document is privileged²⁵ unless the publication is proved to be made with malice²⁶.

The rights to inspect, copy and be furnished with documents under Part VA of the Local Government Act 1972 are in addition, and without prejudice, to any such rights conferred by or under any other enactment²⁷.

1 Ie the Local Government Act 1972 Pt VA (ss 100A-100K).

2 Local Government Act 1972 s 100H(1) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1)). As to access to documents see PARA 662 et seq.

3 Ie documents open to inspection under the Local Government Act 1972 s 100D(1): see PARA 664.

4 Local Government Act 1972 s 100H(1)(a) (as added: see note 2).

5 Local Government Act 1972 s 100H(1)(b) (as added: see note 2).

6 Ie under any provision of the Local Government Act 1972 Pt VA.

7 As to the meaning of 'copy' see PARA 662 note 4.

8 Local Government Act 1972 s 100H(2)(a) (as added: see note 2).

9 Local Government Act 1972 s 100H(2)(b) (as added: see note 2).

10 As to the meaning of 'principal council' for these purposes see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23.

11 Ie the Local Government Act 1972 s 100H(2): see the text and notes 6-9.

12 Local Government Act 1972 s 100H(3) (as added: see note 2).

13 Ie under the Local Government Act 1972 s 100B(1) (see PARA 662); s 100C(1) or s 100EA(2) (see PARA 663); see s 100H(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 237(2)).

14 A person guilty of an offence is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Local Government Act 1972 s 100H(4) (as added: see note 2). As to the standard scale see PARA 105 note 7.

15 Local Government Act 1972 s 100H(4) (as added: see note 2).

16 ie a right conferred by the Local Government Act 1972 Pt VA.

17 Local Government Act 1972 s 100H(4)(a) (as added: see note 2).

18 ie under any provision of the Local Government Act 1972 Pt VA.

19 Local Government Act 1972 s 100H(4)(b) (as added: see note 2).

20 For the purposes the Local Government Act 1972 s 100H(5), the 'accessible documents' for a meeting are the following: (1) any copy of the agenda or of any item included in the agenda for the meeting; (2) any such further statements or particulars for the purpose of indicating the nature of any item included in the agenda as are mentioned in s 100B(7)(b) (see PARA 662); (3) any copy of a document relating to such an item which is supplied for the benefit of a newspaper in pursuance of s 100B(7)(c) (see PARA 662); (4) any copy of the whole or part of a report for the meeting; (5) any copy of the whole or part of any background papers for a report for the meeting, within the meaning of s 100D (see PARA 664); s 100H(6) (as added: see note 2). As to the meaning of 'meeting' see PARA 661 note 1. As to admission of the public to meetings of principal councils see PARA 661. As to the meaning of 'newspaper' see PARA 661 note 10.

21 See the Local Government Act 1972 s 100H(5), (6) (as added: see note 2).

22 Local Government Act 1972 s 100H(5)(a) (as added: see note 2).

23 Local Government Act 1972 s 100H(5)(b) (as added: see note 2). The reference in the text to the supply of an accessible document to a newspaper is a reference to the supply of an accessible document to a newspaper in pursuance of s 100B(7) (see PARA 662): s 100H(5)(b) (as so added).

24 As to the law of defamation generally see **LIBEL AND SLANDER**.

25 As to privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 94 et seq.

26 Local Government Act 1972 s 100H(5) (as added: see note 2).

27 Local Government Act 1972 s 100H(6) (as added: see note 2).

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(b) Members of Principal Councils

666. Additional rights of access to documents.

Any document which is in the possession or under the control of a principal council¹ and contains material relating to any business to be transacted at a meeting of the council or a committee or sub-committee² of the council must³ be open to inspection by any member of the council⁴. This does not require the document to be open to inspection if it appears to the proper officer⁵ that it discloses exempt information⁶. However, despite this exception, the document is to be open to inspection if the information is:

- 585 (1) information relating to the financial or business affairs of any particular person (including the authority holding that information)⁷, except to the extent that the information relates to any terms proposed or to be proposed by or to the authority⁸ in the course of negotiations for a contract⁹; or
- 586 (2) information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment¹⁰.

The rights conferred on a member of a principal council are in addition to any other rights he may have¹¹.

The Secretary of State may by regulations make provision for written records¹² of decisions made or action taken by a member of a local authority, in exercise of a function of the authority¹³ to be made and provided to the authority by the member¹⁴.

1 As to the meaning for these purposes of 'principal council' see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23.

2 As to meaning of 'meeting' see PARA 661 note 1. As to admission of the public to meetings of principal councils see PARA 661. As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2.

3 In relation to England this is subject to the Local Government Act 1972 s 100F(2)-(2C) and in relation to Wales it is subject to s 100F(2)-(2E): see s 100F(1) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1); and the Local Government Act 1972 s 100F(1) amended by SI 2006/88; SI 2007/696).

4 Local Government Act 1972 s 100F(1) (as added and amended: see note 3). See also PARA 221.

5 As to the proper officer see PARA 431.

6 See the Local Government Act 1972 s 100F(2), (2C) (s 100F as added (see note 3); s 100F(2) substituted by SI 2006/88; and Local Government Act 1972 s 100F(2C) added by SI 2006/88 and substituted by SI 2007/969). As to the meaning of 'exempt information' see PARA 643. As to the meaning of 'information' see PARA 642. The Secretary of State may by order amend the Local Government Act 1972 s 100F(2)-(2C) and the Welsh Ministers may by order amend s 100F(2)-(2E) by adding to the descriptions of exempt information to which those provisions refer for the time being or by removing any description of exempt information to which those provisions refer for the time being: see s 100F(3), (3A) (s 100F as so added; s 100F(3) as amended and s 100F(3A) as added by SI 2006/88). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

7 I.e. of a description for the time being falling within the Local Government Act 1972 Sch 12A paras 3, 14: see PARA 643.

8 As to the meaning of 'the authority' see PARA 643 note 9.

9 See the Local Government Act 1972 s 100F(2A)(a), (2D)(a) (s 100F as added (see note 3); s 100F(2A) added by SI 2006/88; and the Local Government Act 1972 s 100F(2D) added by SI 2007/969).

10 See the Local Government Act 1972 s 100F(2A)(b), (2D)(b) (s 100F as added (see note 3); s 100F(2A)(b), (2D)(b) as added (see note 9)).

11 Local Government Act 1972 s 100F(5) (as added: see note 3).

12 Any written record provided to the authority under regulations under the Local Government Act 1972 s 100EA(1) must be open to inspection by members of the public at the offices of the authority for the period of six years beginning with the date on which the decision was made or action was taken: s 100EA(2) (added by the Local Government and Public Involvement in Health Act 2007 s 237(1)).

13 I.e. by virtue of arrangements made under the Local Government and Public Involvement in Health Act 2007 s 236 (see PARA 378).

14 Local Government and Public Involvement in Health Act 2007 s 100EA(1) (as added: see note 12).

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(c) Publicity

UPDATE

666 Additional rights of access to documents

NOTE 12--In exercise of the powers conferred by the Local Government Act 1972 s 100EA(1), the Exercise of Functions by Local Councillors (Written Records) Regulations 2009, SI 2009/352 has been made.

667. Principal councils to publish additional information.

A principal council¹ must maintain a register stating the name and address of every member of the council for the time being together with, in the case of a councillor, and the ward or division which he represents², and the name and address of every member of each committee or sub-committee of the council³ for the time being⁴.

A principal council must maintain a list: (1) specifying those powers of the council which, for the time being, are exercisable from time to time by officers of the council in pursuance of arrangements made under the Local Government Act 1972 or any other enactment for their discharge by those officers⁵; and (2) stating the title of the officer by whom each of the powers so specified is for the time being so exercisable⁶. However, this does not require a power to be specified in the list if the arrangements for its discharge by the officer are made for a specified period not exceeding six months⁷.

There must be kept at the offices of every principal council a written summary of the rights:

- 587 (a) to attend meetings of a principal council and of committees and sub-committees of a principal council⁸; and
- 588 (b) to inspect and copy⁹ documents and to be furnished with documents¹⁰,

which are for the time being conferred by Part VA¹¹ and Part XI¹² of the Local Government Act 1972 and such other enactments as the Secretary of State or the Welsh Ministers¹³ by order specify¹⁴.

The register, the list and the summary are to be open to inspection by the public at the offices of the council¹⁵.

1 As to the meaning for these purposes of 'principal council' see PARA 661 note 1; and as to the meaning of 'principal council' generally see PARA 23.

2 Local Government Act 1972 s 100G(1)(a) (ss 100A-100K added by the Local Government (Access to Information) Act 1985 s 1(1); and amended by the Local Government and Public Involvement in Health Act 2007 s 245(2)).

3 As to the meaning of 'committee or sub-committee of a principal council' see PARA 661 note 2.

4 Local Government Act 1972 s 100G(1)(b) (as added: see note 2). As from a day to be appointed s 100G(1)(b) is substituted to provide that a principal council must maintain a register in respect of every committee or sub-committee of the council stating: (1) the members of the council who are members of the committee or sub-committee or who are entitled, in accordance with any standing orders relating to the committee or sub-committee, to speak at its meetings or any of them; (2) the name and address of every other person who is a member of the committee or sub-committee or who is entitled, in accordance with any standing orders relating to the committee or sub-committee, to speak at its meetings or any of them otherwise than in the capacity of an officer of the council; and (3) the functions in relation to the committee or sub-committee of every person falling within head (1) who is not a member of the committee or sub-committee and of every person falling within head (2): s 100G(1)(b) (as so added; and prospectively substituted by the Local Government and Housing

Act 1989 s 194, Sch 11 para 24). At the date at which this volume states the law no such day had been appointed. As to standing orders see **PARA 620**. As to officers see **PARA 425 et seq.**

A joint authority, joint waste authority, a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) **PARA 139**), or the Metropolitan Police Authority must maintain a register stating the name and address of every member of the body for the time being, and the name or description of the body or other person that appointed him and the name and address of every member of each committee or sub-committee of the body for the time being: Local Government Act 1972 ss 100G(1), 100J(1), (4)(a) (ss 100G, 100J both as added (see note 2); s 100J(1) amended by the Education Reform Act 1988 s 237, Sch 13, Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(5); the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I, para 9(2); the Environment Act 1995 s 63, Sch 7 para 12(2)(a); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 4(2); the Greater London Authority Act 1999 ss 313(1), (2), 331(1), (2); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 paras 1, 8(a); and the Local Government Act 1972 s 100J(4)(a) amended by the Police and Magistrates' Courts Act 1994 Sch 4 para 9(3)(a), (b); the Police Act 1996 Sch 7 para 1(2)(h); the Police Act 1997 Sch 6 para 4(5); the Greater London Authority Act 1999 s 313(1), (4); and the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13 para 8). As to joint authorities see **PARA 47**. As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) **PARAS 147-155**.

The Broads Authority or its navigation committee or any national park authority must maintain a register stating the name and address of every member of the body for the time being and the name of the person who appointed him, and the name and address of every member of each committee or sub-committee of the body for the time being: Local Government Act 1972 ss 100G(1), 100J(1), (4)(aa) (s 100G(1) as so added; s 100J(1) as so added and amended; and s 100J(4)(aa) added by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 10(5); and amended by the Environment Act 1995 Sch 7 para 12(2)(c)(i), (ii); and the Local Government and Public Involvement in Health Act 2007 s 74(1), Sch 3 paras 1, 8(1), (3)(a)). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) **PARA 734 et seq.** As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARA 526 et seq.**

A joint board or joint committee falling within the Local Government Act 1972 s 100J(2) (see **PARA 661** note 1) must maintain a register stating the name and address of every member of the joint board or joint committee for the time being: ss 100G(1), 100J(1), (2), (4)(b) (ss 100G(1), 100J as so added; s 100J(1) as so added and amended; and s 100J(2), (4)(b) as so added; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 paras 1, 8(1), (4)). As to joint boards see **PARA 10**. As to joint committees see **PARA 380**.

A fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 or a scheme to which s 4 applies must maintain a register stating the name and address of every member of the authority for the time being and the constituent area which he represents, and the name and address of every member of each committee or sub-committee of the authority for the time being: Local Government Act 1972 s 100G(1) (as so added), s 100J(1) (as so added and amended), s 100J(4)(c) (as so added; and amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 39(3); and the Local Government and Public Involvement in Health Act 2007 Sch 3 para 8(5)).

The London Fire and Emergency Planning Authority must maintain a register stating: (a) the name and address of every member of the council for the time being and whether he is a London Assembly representative or a borough representative; and (i) if he is a representative of the London Assembly, whether he is a London member or a constituency member and, if a constituency member, the London Assembly constituency for which he is a member; or (ii) if he is a London borough representative, the council of which he is a member (whether a London borough council or the Common Council of the City of London); and (b) the name and address of every member of each committee or sub-committee of the council for the time being: ss 100G(1), 100J(1), (4A) (s 100G(1) as so added; s 100J(1) as so added and amended; and s 100J(4A) added by the Greater London Authority Act 1999 s 331(1), (5); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 3 para 8(6)). As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) **PARA 17**; **LONDON GOVERNMENT**.

5 Local Government Act 1972 s 100G(2)(a) (as added: see note 2).

6 Local Government Act 1972 s 100G(2)(b) (as added: see note 2).

7 Local Government Act 1972 s 100G(2) (as added: see note 2). As to the discharge of functions generally see **PARA 369 et seq.**

8 Local Government Act 1972 s 100G(3)(a) (as added: see note 2). As to admission of the public to meetings of principal councils see **PARA 661**.

9 As to the meaning of 'copy' see **PARA 662** note 4.

10 Local Government Act 1972 s 100G(3)(b) (as added: see note 2). As to access to documents see **PARA 662 et seq.**

- 11 le the Local Government Act 1972 Pt VA (ss 100A-100K).
- 12 le the Local Government Act 1972 Pt XI (ss 222-244A).
- 13 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.
- 14 Local Government Act 1972 s 100G(3) (as added: see note 2). As to the orders that have been made under s 100G(3) see the Local Government (Inspection of Documents) (Summary of Rights) Order 1986, SI 1986/854.
- 15 See the Local Government Act 1972 100G(4) (as added: see note 2).

UPDATE

667 Principal councils to publish additional information

NOTE 4--Local Government Act 1972 s 100J(1), (2), (4)(a) further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 18.

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668. Local authorities in Wales to publish additional information.

A local authority¹ in Wales must maintain a register²:

- 589 (1) stating the name and address of every member of the authority's executive for the time being and the ward or division (if any) which that member represents³;
- 590 (2) stating the name and address of every member of each committee of the authority's executive for the time being⁴;
- 591 (3) specifying the functions of the executive which, for the time being, are exercisable by individual members of the executive⁵; and
- 592 (4) stating, as respects each such function, the name of the member by whom it is exercisable⁶.

There must be kept at the principal office of every local authority a written summary of the rights to attend meetings of a local authority executive and of committees of such an executive and to inspect and copy documents and to be furnished with documents, which are conferred by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001⁷.

1 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

2 The register maintained under the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(1), and the summary kept under reg 12(2) must be open to inspection by the public at the principal office of the authority: reg 12(3).

3 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(1)(a).

4 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(1)(b).

5 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(1)(c).

6 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(1)(d).

7 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 12(2).

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(3) DECISIONS OF THE EXECUTIVE

(i) Executive and Key Decisions

669. Executive decisions.

An 'executive decision' means a decision made or to be made by a decision maker¹ in connection with the discharge of a function which is the responsibility of the executive of a local authority².

In relation to Wales, any executive decision made by an individual member must not be implemented until a written statement has been produced in accordance with the relevant provisions³.

1 'Decision maker' means the decision making body by which, or the individual by whom, an executive decision is made: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2. 'Decision making body', in relation to an executive decision, means one of the following bodies authorised to discharge the function to which the executive decision relates in accordance with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, SI 2000/2851, or the Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802 (see PARAS 360-362): (1) the executive of a local authority; (2) a committee of a local authority executive; (3) a joint committee, where all the members of the joint committee are members of a local authority executive; or (4) a sub-committee of a joint committee where all the members of the joint committee are members of a local authority executive: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802, reg 2. As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. 'Joint committee' means a committee appointed under the Local Government Act 1972 s 102(1) (see PARA 371) in accordance with regulations made under the Local Government Act 2000 s 20 (see PARA 362): Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002, SI 2002/802, reg 2. As to areas and authorities in England see PARA 24 et seq. As to executive arrangements see PARA 303 et seq. As to the discharge of functions see PARA 369 et seq. As to meetings and proceedings generally see PARA 619 et seq.

2 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2; Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2.

3 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(2). As to the relevant provisions see reg 7(1); and PARA 680.

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Decisions/670. Key decisions.

670. Key decisions.

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000¹ make provision, in relation to England, for 'key decisions', which is to say, for executive decisions² which are likely to: (1) result in the local authority³ incurring expenditure which is, or the making of savings which are, significant⁴ having regard to the local authority's budget for the service or function to which the decision relates⁵; or (2) be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority⁶.

Where an executive member or officer receives a report, which he intends to take into consideration when he makes a key decision, he must not make the decision until the report has been available for public inspection⁷ for a least five working days⁸.

1 The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272.

2 As to the meaning of 'executive decision' see PARA 669.

3 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

4 In accordance with the Local Government Act 2000 s 38 (see PARA 305), in determining the meaning of 'significant' for the purposes of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 8(1), regard must be had to any guidance for the time being issued by the Secretary of State: reg 8(2). As to the Secretary of State see PARA 96.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 8(1)(a).

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 8(1)(b).

7 Subject to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21 (see PARA 646) the member or proper officer making the decision referred to in reg 8(1) must ensure that the proper officer makes the report referred to in reg 8(1) available for inspection by the public as soon as is reasonably practicable after that officer or member receives it: reg 9(2). The proper officer must, in any report required by reg 9(2) to be available for inspection by the public include a list of background papers for the report or part of the report, and must ensure that sufficient copies of the background papers are available, or that facilities exist for the production of sufficient copies of those papers, to meet every reasonable request from members of the public for them: reg 9(4). As to the meaning of 'background papers' see PARA 658 note 16.

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 9(1) (amended by SI 2002/716). Where a report has been submitted to an executive member or officer with a view to it being considered by him when he makes a key decision, the person who submitted the report must, as soon as is reasonably practicable, supply a copy of it to the chairman of every relevant overview and scrutiny committee or where there is no chairman to every member of the relevant overview and scrutiny committee: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 9(3). As to the meaning of 'copy' see PARA 653 note 2. As to the meaning of 'relevant overview and scrutiny committee' see PARA 653 note 1.

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671. Reports to the local authority where the key decision procedure is not followed.

Where an executive decision¹ has been made and was not treated as being a key decision² and a relevant overview and scrutiny committee³ is of the opinion that the decision should have been treated as a key decision⁴, that overview and scrutiny committee may require the executive which is responsible for the decision to submit a report to the relevant local authority⁵ within such reasonable period as the committee may specify⁶. Such a report must include:

- 593 (1) details of the decision and the reasons for the decision⁷;
- 594 (2) the decision making body⁸ by which, or the individual by whom, the decision was made⁹; and
- 595 (3) if the executive of the relevant local authority is of the opinion that the decision was not a key decision, the reasons for that opinion¹⁰.

1 As to the meaning of 'executive decision' see PARA 670. As to executive arrangements see PARA 303 et seq.

2 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(1)(a). As to the meaning of 'key decision' see PARA 670.

3 As to the meaning of 'relevant overview and scrutiny committee' see PARA 653 note 1. As to overview and scrutiny committees see PARA 342 et seq.

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(1)(b).

5 As to the meaning of 'relevant local authority' see PARA 658 note 10. As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(1).

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(2)(a).

8 As to the meaning of 'decision making body' see PARA 669 note 1.

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(2)(b).

10 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 19(2)(c).

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672. Forward plans.

A plan (which is known as a 'forward plan') is to be prepared¹ by the executive leader² or, as the case may be, by the elected mayor, where he is a member of the mayor and cabinet executive³, or the council manager, and the first such forward plan must be prepared as soon as is reasonably practicable after the authority has adopted executive arrangements⁴. A forward plan is to contain details of all the matters likely to be the subject of key decisions⁵ by the relevant authority⁶ for a period of four months⁷. A forward plan is to be updated on a monthly basis, and a new forward plan produced at least 14 days prior to the first day upon which it comes into effect, with any outstanding matters contained in the previous forward plan being included in the latest forward plan⁸. The most recent forward plan is to be taken to have superseded any earlier plan or, as the case may be, each earlier plan⁹.

Each forward plan is to contain, as regards each matter¹⁰ such of the following particulars as are available when the plan is prepared or which the person preparing it may then reasonably be expected to obtain¹¹:

- 596 (1) the matter in respect of which the decision is to be made¹²;
- 597 (2) where the decision maker¹³ is an individual, his name and his title (if any) and, where the decision maker is a decision making body¹⁴, its name and a list of its members¹⁵;
- 598 (3) the date on which, or the period within which, the decision is to be made¹⁶;
- 599 (4) the identity of the principal groups or organisations whom the decision maker proposes to consult before making the decision¹⁷;
- 600 (5) the means by which any such consultation is proposed to be undertaken¹⁸;
- 601 (6) the steps that may be taken by any person who wishes to make representations to the local authority executive¹⁹ or to the decision maker about the matter in respect of which the decision is to be made, and the date by which those steps are to be taken²⁰; and
- 602 (7) a list of the documents²¹ submitted to the decision maker for consideration in relation to the matter in respect of which the decision is to be made²².

Where, in relation to any matter, the public may be excluded²³ from the meeting at which that matter is to be discussed²⁴, or where documents relating to the decision need not be disclosed²⁵ to the public²⁶, the forward plan is to contain particulars of the matter but may not contain any confidential or exempt information²⁷ or particulars of the advice of a political adviser or assistant²⁸.

1 In accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 13, 14: see the text and notes 2-28.

2 As to the meaning of 'executive leader' see PARA 327.

3 As to mayor and cabinet executives see PARA 328. See also PARA 320 note 4.

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 13(1) (substituted by SI 2002/716). As to the meaning of 'council manager' see PARA 327. As to executive arrangements see PARA 303 et seq.

5 As to the meaning of 'key decision' see PARA 670.

6 As to the meaning of 'relevant local authority' see PARA 658 note 10.

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 13(2). The first such plan is to have effect from the first working day of any month: reg 13(2).

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 13(3).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 13(4).

10 In each matter referred to in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 13(1): see the text and notes 1-4.

11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(1). This is subject to reg 15(1) (see PARA 673): see reg 14(1) (amended by SI 2002/716).

12 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(a).

13 As to the meaning of 'decision maker' see PARA 669 note 1.

- 14 As to the meaning of 'decision making body' see PARA 669 note 1.
- 15 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(b).
- 16 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(c).
- 17 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(d).
- 18 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(e).
- 19 As to executive arrangements see PARA 303 et seq.
- 20 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(f).
- 21 As to the meaning of 'document' see PARA 652 note 1.
- 22 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(2)(g).
- 23 Is subject to the provisions relating to confidential information under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21: see PARA 646. As to the meanings of 'confidential information' and 'information' see PARA 642.
- 24 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(3)(a).
- 25 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(5); and PARA 646.
- 26 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(3)(b).
- 27 As to the meaning of 'exempt information' see PARA 643 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2). As to the meaning of 'confidential information' see PARA 642.
- 28 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 14(3) (amended by SI 2002/716). As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

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673. Procedure where matters are excepted from a forward plan.

Where the inclusion of a matter on the forward plan is impracticable¹ and the matter would be the subject of a key decision², that decision is only to be made:

- 603 (1) where the proper officer³ has informed the chairman of the relevant overview and scrutiny committee⁴ or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made⁵;
- 604 (2) where the proper officer has made available at the offices of the local authority⁶ for inspection by the public a copy⁷ of the notice given pursuant to head (1) above⁸; and

605 (3) after five clear days have elapsed following the day on which the proper officer made the notice available⁹.

1 This is however subject to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 16 (see PARA 677); reg 15(1) (amended by SI 2002/716). As to forward plans see PARA 672.

2 As to the meaning of 'key decision' see PARA 670.

3 As to the proper officer see PARA 431.

4 As to the meaning of 'relevant overview and scrutiny committee' see PARA 653 note 1. As to overview and scrutiny committees see PARA 342 et seq. As to the meaning of 'relevant local authority' see PARA 658 note 10. As to the discharge of functions see PARA 369 et seq.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15(1)(a).

6 As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

7 As to the meaning of 'copy' see PARA 653 note 2.

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15(1)(b).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15(1)(c) (amended by SI 2002/716).

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674. Key decisions at meetings of local authority executives.

Where the executive leader, the elected mayor, or the council manager¹, as the case may be, or any other person likely to preside at the meeting, reasonably believes that one of the following circumstances specified below applies in relation to a meeting, or part of a meeting, of a decision making body², that meeting or part of a meeting must be held in public³. The circumstances are:

- 606 (1) a decision to be made will be a key decision⁴; or
- 607 (2) a matter that is included on the forward plan⁵, or falls within the general exception provisions relating to such inclusion⁶, and the decision is likely to be made within 28 days, and an officer, who is not a political adviser or assistant⁷ or council manager, will be present at the discussion⁸.

1 As to mayor and cabinet executives see PARA 328. As to the meaning of 'council manager' see PARA 333.

2 As to the meaning of 'decision making body' see PARA 669 note 1.

3 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7(1) (reg 7(1), (2) substituted and reg (2A) added by SI 2002/716). This is however subject to the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21 (see PARA 646). 'Public meeting', in relation to a decision making body, means: (1) a meeting which, in accordance with reg 7, is required to be held in public; and (2) any other meeting of a decision making body that decision making body determines must be held in public: reg 2 (definition substituted by SI 2002/716).

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7(2)(a) (as substituted: see note 3). As to the meaning of 'key decision' see PARA 670.

5 As to the forward plan see PARA 672.

6 It is the subject of a notice given under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15 (see PARA 673).

7 As to the meaning of 'political adviser or assistant' see PARA 652 note 13.

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7(2)(b) (as substituted: see note 3). For the purposes of reg 7(1)(b), 'meeting' does not include a meeting the principal purpose of which is for an officer of the local authority to brief a decision maker or members of a decision making body on matters connected with the making of an executive decision: reg 7(2A) (as added: see note 3). In accordance with the Local Government Act 2000 s 38 (see PARA 305), in determining the meaning of 'principal purpose' for the purposes of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7(2), regard must be had to any guidance for the time being issued by the Secretary of State: reg 7(3). As to the meaning of 'decision maker' see PARA 669 note 1. As to the meaning of 'executive decision' see PARA 670. As to the Secretary of State see PARA 96.

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675. Publicity in connection with key decisions.

The executive leader¹ or, as the case may be, the elected mayor, where he is a member of the mayor and cabinet executive², or the council manager³ must instruct the proper officer⁴ to publish a document⁵ which states:

- 608 (1) that key decisions⁶ are to be made on behalf of the local authority⁷;
- 609 (2) that a forward plan⁸ containing particulars of the matters in respect of which those decisions are to be made, will be prepared on a monthly basis by the local authority⁹;
- 610 (3) that a forward plan will contain details of the key decisions likely to be made by the local authority for the four month period following the publication of the forward plan¹⁰;
- 611 (4) that each current forward plan may be inspected at all reasonable hours and free of charge at the local authority's offices¹¹;
- 612 (5) that each forward plan contains a list of the documents submitted to the decision makers¹² for consideration in relation to the matters in respect of which decisions are to be made¹³;
- 613 (6) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available¹⁴;
- 614 (7) that other documents relevant to those matters may be submitted to the decision makers¹⁵;
- 615 (8) the procedure for requesting details of those documents, if any, as they become available¹⁶; and
- 616 (9) the dates in each month in the following 12 months on which each forward plan will be published and available to the public at the local authority's offices¹⁷.

The document must be published in at least one newspaper¹⁸ circulating in the area of the local authority¹⁹. It must be published annually on a date at least 14 days, but not more than 21 days, before the first forward plan of that year comes into effect²⁰.

- 1 As to the meaning of 'executive leader' see PARA 327.
- 2 As to mayor and cabinet executives see PARA 328.
- 3 As to the meaning of 'council manager' see PARA 333.
- 4 As to the proper officer see PARA 431.
- 5 As to the meaning of 'document' see PARA 652 note 1. As to the meaning of 'background papers' see PARA 658 note 16. 'Report' in relation to an executive decision does not include a report in draft form: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2. As to the meaning of 'executive decision' see PARA 670.
- 6 As to the meaning of 'key decision' see PARA 670.
- 7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(a). As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.
- 8 As to forward plans see PARA 672.
- 9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(b).
- 10 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(c).
- 11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(d).
- 12 As to the meaning of 'decision maker' see PARA 669 note 1.
- 13 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(e).
- 14 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(f).
- 15 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(g).
- 16 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(h).
- 17 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(1)(i). As to the inspection of documents see PARA 659.
- 18 For these purposes, 'newspaper' includes: (1) a news agency which systematically carries on the business of selling and supplying reports or information to newspapers; and (2) any organisation which is systematically engaged in collecting news for sound or television broadcasts or for inclusion in programmes to be included in any programme service within the meaning of the Broadcasting Act 1990 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARAS 253, 293, 429) other than a sound or television broadcasting service within the meaning of Pt III (ss 83-126) or Pt I (ss 1-71) (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARAS 293, 429) respectively: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2. 'Information' includes an expression of opinion, any recommendations and any decision made: reg 2. As to privileges of the press see **PRESS, PRINTING AND PUBLISHING** vol 36(2) (Reissue) PARA 458 et seq.
- 19 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(2)(a).
- 20 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 12(2)(b).

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(ii) Cases of Special Urgency

676. Executive decisions in Wales.

Where the date by which an executive decision¹ must be implemented makes compliance with the requirements to record that decision² impracticable, the decision must only be implemented where the decision maker³ has obtained agreements from:

- 617 (1) the chairperson of the relevant scrutiny committee⁴; or
- 618 (2) if there is no such person, or that person is unable to act, the chairperson of the relevant local authority⁵; or
- 619 (3) if there is no chairperson of either the relevant scrutiny committee or the relevant local authority, the vice-chairman of the relevant local authority⁶,

that the making of the decision is urgent and cannot reasonably be deferred⁷.

1 As to the meaning of 'executive decision' see PARA 670. As to executive arrangements see PARA 303 et seq.

2 Ie compliance with the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(2) (see PARA 669).

3 As to the meaning of 'decision maker' see PARA 669 note 1.

4 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(3)(a).

5 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(3)(b). As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

6 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(3)(c).

7 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(3).

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677. Key decisions in England.

Where the date by which an executive decision¹ that would be a key decision² must be made, makes compliance with the procedure for matters excepted from forward plans³ impracticable, the decision is only to be made where the decision maker⁴ has obtained agreement that the making of the decision is urgent, and cannot reasonably be deferred, from:

- 620 (1) the chairman of the relevant overview and scrutiny committee⁵; or

- 621 (2) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority⁶; or
- 622 (3) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority, the vice-chairman of the relevant local authority⁷.

The executive leader⁸ or, as the case may be, the elected mayor, where he is a member of the mayor and cabinet executive⁹, or the council manager¹⁰ must submit to the local authority¹¹ at quarterly intervals a report containing details of each executive decision taken during the preceding three months where the making of the decision was agreed as urgent¹². A report submitted for these purposes must include particulars of each decision made¹³ and a summary of the matters in respect of which each decision was made¹⁴.

1 As to the meaning of 'executive decision' see PARA 670. As to executive arrangements see PARA 303 et seq.

2 As to the meaning of 'key decision' see PARA 670.

3 le compliance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 15: see PARA 673. As to forward plans see PARA 672.

4 As to the meaning of 'decision maker' see PARA 669 note 1.

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 16(a) (amended by SI 2002/716). As to the meaning of 'relevant overview and scrutiny committee' see PARA 653 note 1. As to overview and scrutiny committees see PARA 342 et seq.

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 16(b) (amended by SI 2002/716). As to the meaning of 'relevant local authority' see PARA 658 note 10. As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23.

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 16(c) (amended by SI 2002/716).

8 As to the meaning of 'executive leader' see PARA 327.

9 As to mayor and cabinet executives see PARA 328.

10 As to the meaning of 'council manager' see PARAS 327, 333.

11 As to the meaning of 'local authority' for these purposes see PARA 648 note 1; and as to the meaning of 'local authority' generally see PARA 23.

12 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 20(1). The decision referred to in the text is a decision agreed as urgent in accordance with reg 16: see the text and notes 1-7.

13 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 20(2)(a).

14 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 20(2)(b).

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(iii) Recording of Decisions

678. Recording of executive decisions made at meetings in England.

In relation to England, where an executive decision¹ has been made at a public or private meeting² of a decision making body³, then, as soon as reasonably practicable after the meeting, the proper officer⁴ or, in the event that the proper officer is not present at that meeting, the person presiding⁵ must ensure that a written statement is produced in respect of every executive decision made at that meeting⁶. The statement must include the following information: (1) a record of the decision⁷; (2) a record of the reasons for the decision⁸; (3) details of any alternative options considered and rejected by the decision making body at the meeting at which the decision was made⁹; (4) a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision making body which made the decision¹⁰; and (5) in respect of any declared conflict of interest, a note of any dispensation granted by the local authority's standards committee¹¹.

1 As to the meaning of 'executive decision' see PARA 670.

2 'Private meeting', in relation to a local authority executive, means a meeting which is not a public meeting: Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2. As to the meaning of 'public meeting' see PARA 674 note 3. As to the meaning of 'local authority' for these purposes see PARA 648 note 2; and as to the meaning of 'local authority' generally see PARA 23. As to executive arrangements see PARA 303 et seq.

3 As to the meaning of 'decision making body' see PARA 669 note 1.

4 As to the proper officer see PARA 431.

5 For the purposes of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(1), 'person presiding' means the person actually presiding, or the person nominated to preside, at that meeting: reg 3(3).

6 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(1). As to the meaning of 'information' see PARA 675 note 18.

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(2)(a).

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(2)(b).

9 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(2)(c).

10 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(2)(d).

11 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 3(2)(e). As to the meaning of 'standards committee' see the Local Government Act 2000 s 53; and PARA 238 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2).

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679. Recording of executive decisions made at meetings in Wales.

In relation to Wales, the proper officer¹, or in the event of the proper officer not being present, the proper officer's representative², must attend any meeting of a decision making body³ at which an executive decision⁴ is to be made and ensure that a written statement is produced as soon as is reasonably practicable after the meeting in respect of every executive decision made at that meeting which must include the following information⁵. The statement must include:

- 623 (1) a record of the decision including the date it was made⁶;
- 624 (2) a record of the reasons for the decision⁷;
- 625 (3) a record of any declaration of interest in relation to the matter decided which is declared by any member of the decision making body which made the decision⁸;
- 626 (4) in respect of any declared interest, a note of any dispensation granted by the local authority's standards committee⁹; and
- 627 (5) details of any consultation undertaken in accordance with the authority's standing orders and constitution and where such consultation has not taken place, the reasons why that is the case¹⁰.

1 As to the meaning of 'proper officer' see PARA 431.

2 For these purposes 'proper officer's representative' means the officer of the local authority or the person or persons nominated by the proper officer to attend the meeting for the purpose of producing the statement: Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(3).

3 As to the meaning of 'decision making body' see PARA 669 note 1.

4 As to the meaning of 'executive decision' see PARA 670.

5 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(1).

6 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(a).

7 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(b).

8 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(c).

9 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(d). As to the meaning of 'standards committee' see the Local Government Act 2000 s 53; and PARA 238 (definition applied by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

10 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 6(e).

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680. Recording of executive decisions made by individual members.

In relation to England, as soon as is reasonably practicable after an individual member has made any executive decision¹ he must produce, or, if he instructs the proper officer² to do so, the proper officer must produce, a written statement in respect of that executive decision

which includes the following information³: (1) a record of the decision⁴; (2) a record of the reasons for the decision⁵; (3) details of any alternative options considered and rejected at the time by the member when he made the decision⁶; (4) a record of any conflict of interest declared by any executive member who is consulted by the member, in relation to the decision⁷; and (5) in respect of any declared conflict of interest a note of any dispensation granted by the local authority's standards committee⁸.

In relation to Wales, as soon as reasonably practicable after an individual member has made any executive decision, that member must instruct the proper officer to produce a written statement of that executive decision which includes the following information⁹: (a) a record of the decision including the date it was made¹⁰; (b) a record of the reason for the decision¹¹; (c) a record of any interest declared by any executive member who is consulted by the member, in relation to the decision and of any interest declared by any executive member who would have been the decision maker except for the declaration of such an interest¹²; (d) in respect of any declared interest, a note of any dispensation granted by the local authority's standards committee¹³; (e) details of any consultation undertaken in accordance with the local authority's standing orders and constitution and where such consultation has not taken place, the reasons why that is the case¹⁴; and (f) a record of any reasons for urgency which led to the implementation of the decision before the preparation of the statement¹⁵.

1 As to the meaning of 'executive decision' see PARA 670. As to executive arrangements see PARA 303 et seq. As to the recording of key decisions see PARA 681.

2 As to the proper officer see PARA 431.

3 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(1). As to the meaning of 'information' see PARA 675 note 18.

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(2)(a).

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(2)(b).

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(2)(c).

7 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(2)(d).

8 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(2)(e). As to the meaning of 'local authority' for these purposes see PARA 648 note 1; and as to the meaning of 'local authority' generally see PARA 23. As to the meaning of 'standards committee' see the Local Government Act 2000 s 53; and PARA 238 (definition applied by the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 2).

9 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(1).

10 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(a).

11 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(b).

12 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(c). As to the meaning of 'decision maker' see PARA 669 note 1.

13 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(d).

14 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(e).

15 Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290, reg 7(4)(f).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(3) DECISIONS OF THE EXECUTIVE/(iii) Recording of Decisions/681. Recording of key decisions made by individual officers.

681. Recording of key decisions made by individual officers.

As soon as is reasonably practicable after an officer has made a decision which is a key decision¹, the officer must produce a written statement which must include: (1) a record of the decision²; (2) a record of the reasons for the decision³; (3) details of any alternative options considered and rejected by the officer at the time when he made the decision⁴; (4) a record of any conflict of interest declared, in relation to the decision, by any executive member who was consulted by the officer who made the decision⁵; and (5) in respect of any declared conflict of interest in relation to the decision a note of any dispensation granted by the local authority's standards committee⁶.

1 As to the meaning of 'key decision' see PARA 670.

2 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(4)(a).

3 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(4)(b).

4 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(4)(c).

5 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(4)(d).

6 Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 4(4)(e). As to the meaning of 'standards committee' see the Local Government Act 2000 s 53; and PARA 238 (definition applied by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/6. PROCEEDINGS AND DECISIONS/(4) NOTICES/682. In general.

(4) NOTICES

682. In general.

In general, any notice, order or other document required or authorised to be given to or served on any person by or on behalf of a local authority¹ or by one of its officers² may be given to or served on the person in question either by delivering it to him or by leaving it at his proper address, or by sending it by post to him at that address³.

Likewise, any notice, order or other document required or authorised to be given to or served on a local authority or the chairman or an officer of a local authority must generally be given or served by addressing it to the local authority and leaving it at, or sending it by post to, the

authority's principal office or any other office of the authority specified by it as one at which it will accept documents of the same description as that document⁴.

A public notice required to be given by a local authority must be given by posting it in some conspicuous place or places within the area of the local authority and in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice⁵.

1 As to the meaning of 'local authority' for these purposes see PARA 576 note 3. As to the meaning of 'local authority' generally see PARA 23.

2 As to officers see PARA 425 et seq.

3 See the Local Government Act 1972 s 233; and PARA 576.

4 See the Local Government Act 1972 s 231; and PARA 578.

5 See the Local Government Act 1972 s 232(1); and PARA 577.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(1) INTRODUCTION/683. Accountability.

7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES

(1) INTRODUCTION

683. Accountability.

There are two distinct, but related, methods of securing the accountability of local government. The primary (and traditional) method was through the electoral process¹. To enhance that process, central government made provision for the publication of information allowing the electorate to make a more informed view of the performance of the authority². The second, and more recent development, has been by central government imposing legislative requirements for local authorities to have their performance analysed and assessed, with the powers of the authority being linked to previous performances³.

Under certain circumstances the functions of local authorities may also be subject to local inquiry⁴.

A local authority is also subject to the ordinary principles of civil law⁵ and may be convicted of a criminal offence⁶.

1 As to the electoral process see generally **ELECTIONS AND REFERENDUMS**.

2 See PARAS 686-687.

3 See PARA 688 et seq.

4 See PARA 867 et seq.

5 See PARAS 872-877.

6 See PARA 878; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(1) INTRODUCTION/684. Control by regulatory bodies.

684. Control by regulatory bodies.

Local authorities are to some extent under the control of several regulatory bodies.

The Local Better Regulation Office has been recently established to ensure that local authorities exercise their relevant functions effectively¹. It may provide guidance² and financial support and assistance³.

The Audit Commission may carry out general studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the exercise of the functions of local authorities⁴. The accounts of local authorities must be audited by an auditor or auditors appointed by the Audit Commission⁵. Similar provisions also exist in relation to the Auditor General for Wales⁶.

Complaints of maladministration may be investigated by the Commission for Local Administration⁷ and the Public Services Ombudsman⁸.

1 See PARA 732.

2 See PARA 734.

3 See PARA 735 et seq.

4 See PARA 780 et seq.

5 See PARA 744 et seq.

6 See PARA 796 et seq.

7 See PARA 839 et seq. See also in relation to the investigation of maladministration PARA 847 et seq.

8 See PARA 843 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(1) INTRODUCTION/685. Judicial control.

685. Judicial control.

Some statutes specifically provide for a right of appeal against the decision of a local authority¹. A local authority that acts outside of its powers may be subject to judicial review proceedings².

A public authority must act in a way which is compatible with rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms³ and incorporated into domestic law by the Human Rights Act 1998⁴.

1 See PARA 870.

2 See PARA 869.

3 ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq.

4 See PARA 871.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(i) Publication of Information about Performance/686. Code of practice.

(2) BEST VALUE AND PERFORMANCE

(i) Publication of Information about Performance

686. Code of practice.

A code, or codes, of recommended practice as to the publication of information by local authorities about the discharge of their functions and other related matters may be issued by the Secretary of State or the Welsh Ministers¹.

¹ See the Local Government, Planning and Land Act 1980 s 2; and PARAS 443, 546. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. Regulations may be made requiring the authority to publish information within the code: see s 3; and PARAS 443, 546. As to such regulations see PARA 546.

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687. Additional publications.

In addition, the relevant minister¹ may direct a district council or a Welsh county council or county borough council, where the same is carrying out road passenger transport undertakings, to publish information about discharge of those functions and other matters (including forecasts) as he considers to be related².

¹ As to the meaning of 'relevant minister' see PARA 546 note 8.

² See the Local Government, Planning and Land Act 1980 s 4(1), (4)(g), 4(7); and PARA 546.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/688. Best value authorities.

(ii) Best Value

688. Best value authorities.

Each of the following is a best value authority¹:

- 628 (1) an English local authority²;

- 629 (2) a national park authority for a national park in England³;
- 630 (3) the Broads Authority⁴;
- 631 (4) a police authority⁵;
- 632 (5) a fire and rescue authority in England⁶ and a metropolitan county fire and rescue authority⁷;
- 633 (6) the London Fire and Emergency Planning Authority⁸;
- 634 (7) a waste disposal authority⁹;
- 635 (8) a joint waste authority established¹⁰ for an area in England¹¹;
- 636 (9) an Integrated Transport Authority for an integrated transport area in England¹²;
- 637 (10) Transport for London¹³;
- 638 (11) the London Development Agency¹⁴;
- 639 (12) a Welsh best value authority¹⁵.

The Secretary of State¹⁶ may by order provide that certain other authorities and bodies¹⁷ are also best value authorities¹⁸.

The Secretary of State may by order provide that a best value authority specified, or of a description specified in the order, is not subject in relation to such functions as may be specified to the general duty¹⁹.

1 le for the purposes of the Local Government Act 1999 Pt I (ss 1-29).

2 Local Government Act 1999 s 1(1)(a) (substituted by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8, Pt 1, paras 1, 2(1), (2)(a)). As to the meaning of 'local authority' see PARA 23. For these purposes 'English local authority' means: (1) a county council in England, a district council or a London borough council; (2) the Council of the Isles of Scilly; (3) the Common Council of the City of London in its capacity as a local authority; (4) the Greater London Authority so far as it exercises its functions through the Mayor (Local Government Act 1999 s 1(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(1)(a), Sch 8 para 2(3))).

3 Local Government Act 1999 s 1(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8, Pt 1, paras 1, 2(1), (2)(b)). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 Local Government Act 1999 s 1(1)(c). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

5 Local Government Act 1999 s 1(1)(d). For these purposes, 'police authority' means: (1) a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139); (2) the Common Council of the City of London in its capacity as a police authority; (3) the Metropolitan Police Authority: Local Government Act 1999 s 1(4) (amended by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8 para 2(5)). As to the Metropolitan Police Authority see **LONDON GOVERNMENT; POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

6 le a fire and rescue authority in England constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies (see **FIRE SERVICES**).

7 Local Government Act 1999 s 1(1)(e) (substituted by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 91; amended by the Civil Contingencies Act 2004 s 32(1), Sch 2, Pt 1, para 10(1), (2) and the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8, Pt 1, paras 1, 2(1), (2)(c)).

8 Local Government Act 1999 s 1(1)(f). As to the London Fire and Emergency Planning Authority see **FIRE SERVICES; LONDON GOVERNMENT**.

9 Local Government Act 1999 s 1(1)(g) (substituted by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 2(2)(d)). A waste disposal authority for these purposes is one established under the Local Government Act 1985 s 10 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 620).

10 le an authority established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51).

11 Local Government Act 1999 s 1(1)(ga) (added by the Local Government and Public Involvement in Health Act 2007 Sch 13 para 53).

12 Local Government Act 1999 s 1(1)(h) (substituted by the Local Transport Act 2008 Sch 4 para 62). As to the establishment of Integrated Transport Authorities see s 78; and **ROAD TRAFFIC**.

13 Local Government Act 1999 s 1(1)(i). As to Transport for London see **LONDON GOVERNMENT**.

14 Local Government Act 1999 s 1(1)(j). As to the London Development Agency see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988. See also **LONDON GOVERNMENT**.

15 Local Government Act 1999 s 1(1)(k) (added by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 2(2)(e)). As to the meaning of 'Welsh best value authority' see PARA 704.

16 As to the Secretary of State see PARA 96.

17 The authorities and bodies are: (1) a levying body within the meaning of the Local Government Finance Act 1988 s 74(1) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 530) in respect of which the county council or charging authority referred to in s 74(1)(b) was a council or authority for England; (2) a body to which s 75 applies (special levies: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 530) and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in England: Local Government Act 1999 s 2(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 136(2), Sch 18, Pt 1, para 3(3), Pt 8).

18 Local Government Act 1999 s 2(1). The Secretary of State may by order provide for the Greater London Authority to be a best value authority for the purposes of Pt I (ss 1-29) in relation to: (1) specified functions of the Greater London Authority which it does not exercise through the Mayor of London; (2) specified functions which are not functions of the Greater London Authority but are functions of another best value authority: s 2(4). Such an order may provide for Pt I to have effect in relation to those functions with specified modifications. As to the Greater London Authority and the Mayor of London see **LONDON GOVERNMENT**.

19 Local Government Act 1999 s 2(5) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 3(5)). The general duty mentioned in the text is the duty under the Local Government Act 1999 s 3 (see PARA 689). The Local Government Act 1999 s 2(5) does not apply to a Welsh best value authority: s 2(5A) (added by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 3(6)). It seems that as a result of the amendments made to the Local Government Act 1999 s 2 by the Local Government and Public Involvement in Health Act 2007 all orders made prior to that amendment are now spent and at the date at which this volume states the law no orders are currently in force.

UPDATE

688 Best value authorities

TEXT AND NOTES 1-15--Local Government Act 1999 s 1(1)(ha), (hb) added: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 91.

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689. The general duty of best value authorities.

A best value authority¹ must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness². For the purpose of deciding how to fulfil this duty, an authority must consult:

- 640 (1) representatives³ of persons liable to pay any tax, precept or levy to or in respect of the authority⁴;

- 641 (2) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions⁵;
- 642 (3) representatives of persons who use or are likely to use services provided by the authority⁶; and
- 643 (4) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions⁷.

In deciding how to fulfil the duty and the persons to be consulted, and the form, content and timing of consultations, an authority must have regard to any guidance issued by the Secretary of State or the Welsh Ministers⁸.

1 As to best value authorities see PARA 688.

2 Local Government Act 1999 s 3(1). As to the duty of a best value authority to meet any applicable performance standard see PARA 705.

3 For the purposes of the Local Government Act 1999 s 3(2), 'representatives' in relation to a group of persons means persons who appear to the authority to be representative of that group: s 3(3).

4 Local Government Act 1999 s 3(2)(a).

5 Local Government Act 1999 s 3(2)(b).

6 Local Government Act 1999 s 3(2)(c).

7 Local Government Act 1999 s 3(2)(d).

8 Local Government Act 1999 s 3(4) (s 3(4) substituted by Local Government and Public Involvement in Health Act 2007 s 137). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

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690. Involvement of local representatives.

Where a best value authority¹ considers it appropriate for representatives of local persons (or of local persons of a particular description) to be involved in the exercise of any of its functions by being provided with information about the exercise of the function, consulted about the exercise of the function or involved in another way, it must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way². This will not require the authority to take any step which it does not have the power to take under another enactment or rule of law or if the step would be incompatible with a Community obligation or any other duty imposed on the authority under another enactment or rule of law³.

In deciding how to fulfil the above duty an authority must have regard to any guidance issued by the Secretary of State⁴.

1 As to best value authorities see PARA 688. However the Local Government Act 1999 s 3A(1) does not apply to a police authority, a Welsh best value authority, to any other authority or description of authority specified in an order made by the Secretary of State or in any other case specified in such an order and in particular to best value authorities or descriptions of best value authority, functions of best value authorities, descriptions of local person, or ways in which representatives may be involved in the exercise of functions of an authority: s 3A(3), (4) (added by the Local Government and Public Involvement in Health Act 2007 s 138(1)). For this purpose 'local person' means, in relation to a function of a best value authority, a person who is likely to be affected by, or

interested in, the exercise of the function and 'representative' means, in relation to local persons or a description of local person, a person who appears to the best value authority to be representative of the local persons: s 3A(6) (as so added).

2 Local Government Act 1999 s 3A(1) (as added: see note 1).

3 Local Government Act 1999 s 3A(2) (as added: see note 1).

4 Local Government Act 1999 s 3A(5) (as added: see note 1).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/691. Power to charge for discretionary services.

691. Power to charge for discretionary services.

A best value authority¹ has a general power to charge a person for providing a service to him, providing the authority is authorised, but not required, by an enactment to provide that service to that person and he has agreed to its provision². However this may be disapplied by the appropriate person³ (1) in relation to particular descriptions of best value authority or particular best value authorities⁴; (2) in relation to the provision of a particular kind of service by all best value authorities, particular best value authorities or particular descriptions of best value authority⁵.

If an enactment prevents or obstructs the best value authority charging by agreement for the provision of a discretionary service that enactment may be amended, repealed, revoked or disapplied by order⁶.

1 As to the meaning of 'best value authority' see PARA 688 (definition applied by the Local Government Act 2003 s 124).

2 See the Local Government Act 2003 s 93(1); and PARA 506. This is however subject to exceptions: see s 93(2)-(8); and PARA 506.

3 As to the meaning of 'appropriate person' see PARA 502 note 1.

4 See the Local Government Act 2003 s 94(1)(a); and PARA 506.

5 See the Local Government Act 2003 s 94(1)(b); and PARA 506.

6 See the Local Government Act 2003 ss 97, 98; and PARA 507.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/692. Trading powers.

692. Trading powers.

A best value authority may be authorised by the appropriate person¹ to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions². Conditions may be imposed by the appropriate person in relation to the exercise by a best value authority of a power to do anything for a commercial purpose or a power to do anything for such a purpose through a company³.

If an enactment prevents or obstructs the best value authority doing for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions that enactment may be amended, repealed, revoked or disapplied by order⁴.

1 As to the meaning of 'best value authority' see PARA 688 (definition applied by the Local Government Act 2003 s 124). As to the meaning of 'appropriate person' see PARA 502 note 1.

2 See the Local Government Act 2003 s 95; and PARA 502.

3 See the Local Government Act 2003 s 96; and PARA 503.

4 See the Local Government Act 2003 ss 97, 98; and PARA 507.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/693. Contracting-out.

693. Contracting-out.

In exercising a power to contract with a person for the provision of services, a best value authority¹ must deal with matters affecting who will be the employer of existing staff if a contract is entered into and carried out or what will be the terms and conditions of employment of existing staff, or the arrangements for their pensions, if their employer changes as a result of a contract being entered into and carried out, in accordance with directions given to it by the appropriate person².

Where the provision of any services under a contract with a best value authority is to cease in circumstances where they are to be provided instead by members of the authority's staff, the authority must comply with directions given to it by the appropriate person for the purpose of requiring it to offer employment to staff who, before the services cease to be provided under the contract, are engaged in the provision of any of the services³.

1 As to the meaning of 'best value authority' see PARA 688 (definition applied by the Local Government Act 2003 s 124).

2 See the Local Government Act 2003 s 101(1), (7A); and PARA 493. As to the meaning of 'appropriate person' see PARA 502 note 1. There is a duty on the appropriate person to give directions in relation to the securing of pension protection of transferring employees: see s 102; and PARA 494.

3 See the Local Government Act 2003 s 97(3); and PARA 507.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/694. Power to give directions where there is a failure to comply with best value requirements.

694. Power to give directions where there is a failure to comply with best value requirements.

The Secretary of State and the Welsh Ministers¹ have power to give directions in relation to a best value authority² if he or they are satisfied that it is failing to comply with the requirements of Part 1³ of the Local Government Act 1999⁴.

The Secretary of State or the Welsh Ministers may (1) in the case of a Welsh best value authority⁵, direct it to prepare or amend a performance plan or to follow specified procedures in relation to a performance plan⁶; (2) in the case of any best value authority, direct it to carry out a review of its exercise of specified functions⁷; (3) take any action which he or they consider necessary or expedient to secure its compliance with the requirements of Part 1 of the Local Government Act 1999⁸. The Secretary of State or the Welsh Ministers may also direct (a) that a specified function of the authority is to be exercised by the Secretary of State or the Welsh Ministers or a person nominated for a period specified in the direction or for so long as the Secretary of State or the Welsh Ministers consider appropriate⁹; and (b) that the authority is to comply with any instructions of the Secretary of State or the Welsh Ministers or nominee in relation to the exercise of that function and is to provide such assistance as the Secretary of State or the Welsh Ministers or nominee may require for the purpose of exercising the function¹⁰.

If satisfied that an authority is failing to comply with the requirements of Part I of the Local Government Act 1999, the Secretary of State or the Welsh Ministers also have power to direct a local inquiry to be held into the exercise by the authority of specified functions¹¹.

Before giving a direction under these provisions, the Secretary of State or the Welsh Ministers must give the authority concerned an opportunity to make representations about (i) the report (if any) as a result of which the direction is proposed¹²; and (ii) the direction proposed¹³. Before giving a direction under these provisions following a recommendation in a report¹⁴, the Secretary of State or the Welsh Ministers must have regard to any statement¹⁵ which the authority concerned sends to him or them before the expiry of the period of one month starting with the day on which the authority received the report¹⁶. However, the Secretary of State or the Welsh Ministers may give a direction without complying with these provisions¹⁷ if he or they consider the direction sufficiently urgent¹⁸.

A direction given under these provisions is enforceable by mandatory order on the application of the Secretary of State or the Welsh Ministers¹⁹.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 As to best value authorities see PARA 688.

3 I.e. the Local Government Act 1999 ss 1-29.

4 See the Local Government Act 1999 s 15(1).

5 As to Welsh best value authorities see PARA 704.

6 See the Local Government Act 1999 s 15(2)(aa) (added by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 20(a)). As to performance plans see PARA 706.

7 See the Local Government Act 1985 s 15(2)(c) (amended by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8, Pt 1, paras 1, 20(b)).

8 Local Government Act 1999 s 15(5).

9 See the Local Government Act 1999 s 15(6)(a). The Secretary of State (or the Welsh Ministers with the approval of the Secretary of State) may by regulations make provision which:

28 (1) relates to an enactment which confers a function on him in respect of a function of a best value authority (see ss 15(7)(a), 29(4) (s 29(4) amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 22(3), Sch 18, Pt 8)); and

29 (2) he or they consider necessary or expedient for the purposes of cases in which he or they make a direction under the Local Government Act 1999 s 15(6)(a) (s 15(7)(b)).

Regulations under s 15(7) may, in relation to the cases mentioned in head (2) above, disapply or modify an enactment of the kind mentioned in head (1) above and may have an effect similar to the effect of an

enactment of that kind: s 15(8). As to the power to make regulations see further PARA 698. At the date at which this volume states the law no such regulations had been made.

10 Local Government Act 1999 s 15(6)(b).

11 See the Local Government Act 1999 s 15(3). The provisions of the Local Government Act 1972 s 250(2)-(5) (inquiries: see PARA 105) apply in relation to an inquiry which the Secretary of State or the Welsh Ministers direct to be held under the Local Government Act 1999 s 15 as they apply in relation to an inquiry which a minister causes to be held under the Local Government Act 1972 s 250: Local Government Act 1999 ss 15(4), 29(1A) (s 29(1A) (as so added)).

12 See the Local Government Act 1999 s 15(9).

13 Local Government Act 1999 s 15(9)(b).

14 Ie under the Local Government Act 1999 s 7(4)(f): see PARA 707 head (6).

15 The Local Government Act 1999 s 15(10) refers to a statement under s 9(2), but it is submitted that this reference should be read as a reference to s 9(3) (see PARA 709).

16 See the Local Government Act 1999 s 15(10).

17 Ie the Local Government Act 1999 s 15(9) or s 15(10).

18 See the Local Government Act 1999 s 15(11). Where the Secretary of State or the Welsh Ministers give a direction without complying with s 15(9) or s 15(10), he or they must inform the authority concerned, and such persons appearing to him or them to represent best value authorities as he or they consider appropriate, of the direction and of the reason why it was given without complying with those provisions: s 15(12).

19 See the Local Government Act 1999 s 15(13). A mandatory order was formerly known as an order of mandamus: see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/695. Power to facilitate compliance with best value requirements.

695. Power to facilitate compliance with best value requirements.

If the Secretary of State¹ thinks that an enactment prevents or obstructs compliance by best value authorities² with the requirements of Part 1 of the Local Government Act 1999³ he may by order make provision modifying or excluding the application of the enactment⁴ in relation to all best value authorities, particular best value authorities or particular descriptions of best value authority⁵.

The Secretary of State may by order make provision conferring on all best value authorities, particular best value authorities or particular descriptions of best value authority, any power which he considers necessary or expedient to permit or facilitate compliance with the requirements of Part 1 of the Local Government Act 1999⁶. In exercising a power so conferred, a best value authority must have regard to any guidance issued by the Secretary of State⁷.

An order under the above provisions may: (1) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval)⁸; (2) amend an enactment⁹; (3) include consequential, incidental and transitional provision¹⁰; (4) make different provision for different cases (including, in particular, the power to make different provision in relation to different authorities or descriptions of authority)¹¹.

1 As to the Secretary of State see PARA 96. Before the Secretary of State makes an order under the Local Government Act 1999 s 16 he must consult such authorities or persons as appear to him to be representative of

interests affected by his proposals: s 17(1). In exercising the power under the Local Government Act 1999 s 16 the Secretary of State (1) must not make provision which has effect in relation to Wales unless he has consulted the Welsh Ministers; (2) must not make provision amending, or modifying or excluding the application of, Measures or Acts of the National Assembly for Wales without the consent of the National Assembly for Wales; and (3) must not make provision amending, or modifying or excluding the application of, subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998) without the consent of the Welsh Ministers: see the Local Government Act 1999 s 16(3B)-(3D) (added by the Local Government and Public Involvement in Health Act 2007 s 141(1)). Provision is made for the procedure for orders to be made under the Local Government Act 1999 s 16: see s 17.

2 As to best value authorities see PARA 688. However references to a best value authority for these purposes do not include a Welsh best value authority: see the Local Government Act 1999 s 16(6)(b) (added by the Local Government and Public Involvement in Health Act 2007 s 142(1)(b)).

3 le the Local Government Act 1999 Pt I (ss 1-29).

4 For these purposes 'enactment' includes subordinate legislation (within the meaning of the Interpretation Act 1978 s 21): Local Government Act 1999 s 16(6)(a) (as added: see note 2).

5 Local Government Act 1999 s 16(1) (amended by the Local Government Act 2003 Sch 3 para 8(2)).

6 Local Government Act 1999 s 16(2) (amended by the Local Government Act 2003 Sch 3 para 8(3)).

7 Local Government Act 1999 s 16(5).

8 Local Government Act 1999 s 16(3)(a).

9 Local Government Act 1999 s 16(3)(b).

10 Local Government Act 1999 s 16(3)(c).

11 Local Government Act 1999 s 16(3)(d), (3A) (s 16(3A) added by the Local Government Act 2003 Sch 3 para 8(4)).

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696. Power to make regulations relating to accounts.

The Secretary of State or the Welsh Ministers¹ may make regulations about the keeping of accounts by best value authorities². The regulations may:

- 644 (1) require accounts and statements of accounts to be prepared, kept and certified in such form or manner as the regulations may specify³;
- 645 (2) require accounts to be deposited at such places as the regulations may specify⁴;
- 646 (3) require the publication of information about accounts and of statements of accounts⁵;
- 647 (4) make provision (which may include provision requiring the payment of fees) entitling specified classes of person to inspect and to make or receive copies of specified documents⁶.

The regulations may make provision in relation to best value authorities generally or in relation to one or more particular authorities⁷ and may make different provision for different cases⁸.

Before making regulations under these provisions, the Secretary of State and the Welsh Ministers must consult the following:

- 648 (a) if the regulations make provision in relation to Welsh best value authorities or police authorities for police areas in Wales, the Auditor General for Wales⁹;
- 649 (b) if the regulations make provision in relation to other best value authorities, the Audit Commission¹⁰;
- 650 (c) the authorities concerned or persons appearing to him or them to represent them¹¹; and
- 651 (d) such bodies of accountants as appear to him or them to be appropriate¹².

If a person contravenes a provision of the regulations without reasonable excuse, and the regulations declare that contravention of the provision is an offence, then that person is liable on summary conviction to a fine¹³.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 Local Government Act 1999 s 23(1). As to best value authorities see PARA 688. As to the power to make regulations see further PARA 698. At the date at which this volume states the law no such regulations had been made. As to accounts generally see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARAS 628-634.

3 Local Government Act 1999 s 23(2)(a).

4 Local Government Act 1999 s 23(2)(b).

5 Local Government Act 1999 s 23(2)(c).

6 Local Government Act 1999 s 23(2)(d).

7 Local Government Act 1999 s 23(3)(a).

8 Local Government Act 1999 s 23(3)(b).

9 Local Government Act 1999 s 23(4)(za) (added by the Public Audit (Wales) Act 2004 Sch 1 para 14(2); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 21(2)). As to the Auditor General for Wales see PARA 796 et seq. As to Welsh best value authorities see PARA 704.

10 Local Government Act 1999 s 23(4)(a) (amended by the Public Audit (Wales) Act 2004 Sch 1 para 14(3)). As to the Audit Commission see PARA 744.

11 Local Government Act 1999 s 23(4)(b).

12 Local Government Act 1999 s 23(4)(c).

13 Local Government Act 1999 s 23(5). The penalty is a fine not exceeding level 3 on the standard scale: see s 23(5). As to the standard scale see PARA 105 note 7.

Any expenses incurred by an auditor (as appointed by the Audit Commission or the Auditor General for Wales to audit the best value authority's accounts) in connection with proceedings in respect of an offence under s 23(5) which is alleged to have been committed in relation to the accounts of an authority are recoverable from the authority so far as they are not recovered from any other source: s 23(6), (7) (s 23(6) amended and s 23(7) added by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 21(3), (4), Sch 19, Pt 8).

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697. Co-ordination of inspections, inquiries and investigations.

In arranging for or carrying out inspections of best value authorities¹, or inquiries or investigations in relation to best value authorities, a person or body² must have regard to any

guidance issued by the Secretary of State or the Welsh Ministers³ for the purposes of securing the co-ordination of different kinds of inspection, inquiry and investigation⁴.

1 As to best value authorities see PARA 688. As to best value inspections see PARAS 699-702.

2 The Local Government Act 1999 s 25 applies to:

- 30 (1) the Audit Commission (s 25(2)(a));
- 31 (2) the Auditor General for Wales (s 25(2)(aa) (added by the Public Audit (Wales) Act 2004 Sch 1 para 15));
- 32 (3) an inspector, assistant inspector or other officer appointed under the Fire Services Act 1947 s 24(1) (see **FIRE SERVICES** vol 18(2) (Reissue) PARA 11) (Local Government Act 1999 s 25(2)(b));
- 33 (4) Her Majesty's Chief Inspector of Education, Children's Services and Skills (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1168) (s 25(2)(c) (substituted by the Education and Inspections Act 2006 Sch 14 para 37));
- 34 (5) Her Majesty's Chief Inspector of Education and Training in Wales (Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru) (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1227) (Local Government Act 1999 s 25(2)(d) (amended by the Learning and Skills Act 2000 s 73(3)(a));
- 35 (6) a person authorised under the Social Security Administration Act 1992 s 139A(1) (reports on administration of housing benefit and council tax benefit: see **HOUSING** vol 22 (2006 Reissue) PARA 206) (Local Government Act 1999 s 25(2)(h));
- 36 (7) an inspector appointed under the Police Act 1996 s 54 (inspectors of constabulary: see **POLICE** vol 36(1) (2007 Reissue) PARA 206) (Local Government Act 1999 s 25(2)(i)).

Section 25 also applies to a person carrying out an inquiry under the Local Authority Social Services Act 1970 s 7C (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011), a person carrying out an inspection under the National Health Service and Community Care Act 1990 s 48 (inspection of premises used for provision of community care services: see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1014) and a person conducting an inspection under the Children Act 1989 s 80 (inspection of children's homes, etc) or an inquiry under s 81 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 156): see the Local Government Act 1999 s 25(2)(e)-(g). However as from a day to be appointed s 25(2)(e) is prospectively substituted and s 25(2)(f), (g) are prospectively repealed by the Health and Social Care (Community Health and Standards) Act 2008 Sch 9 para 15 and the Local Government Act 1999 s 25 applies to the Care Quality Commission: see s 25(2)(e) (as so prospectively substituted; and amended by the Health and Social Care Act 2008 Sch 5 para 70). At the date at which this volume states the law no such days had been appointed.

As to the Audit Commission see PARA 744 et seq.

The Secretary of State or the Welsh Ministers may by order provide for the Local Government Act 1999 s 25 to apply to a person or body specified in the order: s 25(3). As to the power to make orders see further PARA 698. At the date at which this volume states the law no such order had been made. As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 As to guidance issued by the Secretary of State or the Welsh Ministers see further PARA 698.

4 Local Government Act 1999 s 25(1).

UPDATE

697 Co-ordination of inspections, inquiries and investigations

NOTE 2--The appointed day for the amendment of the Local Government Act 1999 s 25(2)(e) (substitution of s 25(2)(e) and repeal of s 25(2)(f), (g) in force in England)) by the Health and Social Care Act 2008 Sch 5 para 70 is 1 April 2009: see SI 2009/462.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(ii) Best Value/698. Guidance, orders and regulations.

698. Guidance, orders and regulations.

General provision is made in relation to any guidance issued by the Secretary of State or the Welsh Ministers¹ under the provisions of Part 1 of the Local Government Act 1999². The Secretary of State or the Welsh Ministers: (1) may issue guidance to or in respect of authorities generally or to or in respect of one or more particular authorities³; (2) may issue different guidance to or in respect of different authorities⁴; (3) must, before he issues guidance, consult the authorities concerned or persons appearing to him to represent them⁵; (4) must arrange for guidance to be published⁶.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 See the Local Government Act 1999 s 26(1). The provisions referred to in the text are those of Pt 1 (ss 1-39).

3 Local Government Act 1999 s 26(2)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 7 para 2(5), Sch 18, Pt 8).

4 Local Government Act 1999 s 26(2)(b).

5 Local Government Act 1999 s 26(2)(c). Before issuing guidance under s 10 (see PARA 699) the Secretary of State or the Welsh Ministers must, in addition to the consultation required by s 26(2)(c), consult the Audit Commission (s 26(3)); before issuing guidance under s 25 (see PARA 697) the Secretary of State or the Welsh Ministers must, in addition to the consultation required by s 26(2)(c), consult the persons or bodies concerned (s 26(4)); and before issuing guidance under s 10A (see PARA 699), the Secretary of State or the Welsh Ministers must, in addition to the consultation required by s 26(2)(c), consult the Auditor General for Wales (s 26(3A) (added by the Public Audit (Wales) Act 2004 Sch 1 para 16)). As to the Audit Commission see PARA 744 et seq. As to the Auditor General for Wales see PARA 796 et seq.

6 Local Government Act 1999 s 26(2)(d).

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(iii) Performance Assessment

699. Best value inspections.

The Audit Commission¹ may carry out an inspection of a best value authority's² performance of its functions or of any particular function or functions and in particular its compliance with the requirements of Part 1³ of the Local Government Act 1999⁴.

If the Secretary of State⁵ directs the Audit Commission to carry out an inspection of a specified best value authority's compliance with the requirements of that Part in relation to specified functions, the Audit Commission must comply with the direction⁶. Before giving such a direction, the Secretary of State must consult the Audit Commission⁷.

In carrying out an inspection, and in deciding whether to do so, the Audit Commission must have regard to any guidance issued by the Secretary of State⁸.

However the above provisions do not apply in relation to a Welsh best value authority⁹ or a police authority for a police area in Wales¹⁰ and an inspection of compliance with the requirements of Part 1 of the Local Government Act 1999 by a Welsh best value authority or a police authority for a police area in Wales may be carried out by the Auditor General for Wales¹¹.

If the Secretary of State or the Welsh Ministers¹² direct the Auditor General for Wales to carry out such an inspection of compliance with the requirements of that Part in relation to specified functions, the Auditor General for Wales must comply with the direction¹³. In carrying out an inspection, and in deciding whether to do so, the Auditor General for Wales must have regard to any report he has issued recommending such an inspection¹⁴ and any guidance issued by the Secretary of State or the Welsh Ministers¹⁵.

1 As to the Audit Commission see PARA 744 et seq.

2 As to best value authorities see PARA 688.

3 Ie the Local Government Act 1999 Pt 1 (ss 1-29).

4 See the Local Government Act 1999 s 10(A1), (1) (s 10(A1) added and s 10(1) amended by the Local Government and Public Involvement in Health Act 2007 s 152(1)-(3)).

5 As to the Secretary of State see PARA 96.

6 Local Government Act 1999 s 10(2).

7 Local Government Act 1999 s 10(3).

8 Local Government Act 1999 s 10(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 14(2), Sch 18, Pt 8). As to guidance issued by the Secretary of State see further PARA 698.

9 As to best value authorities in Wales see PARA 704.

10 See the Local Government Act 1999 s 10(5) (substituted by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 14(3)).

11 See the Local Government Act 1999 s 10A(1) (s 10A added by the Public Audit (Wales) Act 2004 Sch 1 para 9; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 15(3)). As to the Auditor General for Wales see PARA 796 et seq.

12 As to the Welsh Ministers see PARA 97.

13 Local Government Act 1999 s 10A(2) (as added: see note 11). Before giving such a direction the Secretary of State or the Welsh Ministers must consult the Auditor General for Wales: s 10A(3) (as so added).

14 Ie any recommendation under the Local Government Act 1999 s 7(4)(ea) (see PARA 707).

15 See the Local Government Act 1999 s 10A(4) (as added: see note 11).

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700. Inspectors' powers and duties.

An inspector¹ has a right of access at all reasonable times: (1) to any premises of the best value authority concerned²; and (2) to any document relating to the authority which appears to him to be necessary for the purposes of the inspection (including the power to inspect, copy or take away the document)³. An inspector may require a person holding or accountable for any such

document to give him such information and explanation as he thinks necessary⁴, and may require that person to attend before him in person to give the information or explanation or to produce the document⁵. A best value authority must provide an inspector with every facility and all information which he may reasonably require for the purposes of the inspection⁶.

An inspector must give three clear days' notice of any requirement under these provisions⁷, and must, if so required, produce documents identifying himself⁸.

A person who without reasonable excuse obstructs the exercise of any power conferred under these provisions or fails to comply with a requirement of an inspector under these provisions is guilty of an offence and liable on summary conviction to a fine⁹.

1 For these purposes, 'inspector' means (1) an officer, servant or agent of the Audit Commission carrying out an inspection under the Local Government Act 1999 s 10 (see PARA 699); (2) the Auditor General for Wales, a member of his staff or a person providing services to him who is carrying out an inspection under s 10A (see PARA 699): s 11(7) (substituted by the Public Audit (Wales) Act 2004 Sch 1 para 10).

2 Local Government Act 1999 s 11(1)(a). As to best value authorities see PARA 688.

3 See the Local Government Act 1999 s 11(1)(b), (1A) (s 11(1A) added by the Local Government and Public Involvement in Health Act 2007 s 151(2)(a)).

4 Local Government Act 1999 s 11(2)(a).

5 Local Government Act 1999 s 11(2)(b). In relation to a document kept in electronic form this includes the power to require it to be produced in a form which is legible and can be taken away: s 11(2A) (s 11(2A)-(2C) added by the Local Government and Public Involvement in Health Act 2007 s 151(2)(b)). In connection with inspecting such a document, an inspector may obtain access to, and inspect and check the operation of any computer and associated apparatus or material which he considers is or has been used in connection with the document and may require the person by whom or on whose behalf the computer is or has been used or a person having charge of or otherwise concerned with the operation of the computer, apparatus or material, to afford him such reasonable assistance: see the Local Government Act 1999 s 11(2B), (2C) (as so added).

6 Local Government Act 1999 s 11(3).

7 Local Government Act 1999 s 11(4)(a).

8 Local Government Act 1999 s 11(4)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 16, Sch 18, Pt 8).

9 Local Government Act 1999 s 11(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 151(2)(c)). The penalty is a fine not exceeding level 3 on the standard scale: see the Local Government Act 1999 s 11(5). As to the standard scale see PARA 105 note 7.

Any expenses incurred by an inspector in connection with proceedings for an offence under s 11(5) alleged to have been committed in relation to an inspection of a best value authority are, so far as not recovered from any other source, recoverable from the authority: s 11(6).

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701. Fees.

The Audit Commission, or the Auditor General for Wales, as appropriate,¹ must prescribe a scale or scales of fees in respect of best value inspections² and an authority inspected must pay to the Audit Commission, or the Auditor General for Wales, the fee applicable to the inspection in accordance with the appropriate scale³. If it appears to the Audit Commission, or the Auditor General for Wales, that the work involved in a particular inspection was substantially more or less than that envisaged by the appropriate scale, a larger or smaller fee may be charged⁴.

1 As to the Audit Commission see PARA 744 et seq. As to the Auditor General for Wales see PARA 796 et seq. The Audit Commission must prescribe fees in respect of inspection carried out under the Local Government Act 1999 s 10 and the Auditor General for Wales must prescribe fees in respect of inspections carried out under the Local Government Act 1999 s 10A (see PARA 699).

2 See the Local Government Act 1999 ss 12(1), 12A(1) (s 12A added by the Public Audit (Wales) Act 2004 Sch 1 para 12). Before prescribing the scale of fees under the Local Government Act 1999 s 12 the Audit Commission must consult the Secretary of State and the persons appearing to the Audit Commission to represent best value authorities which may be inspected under s 10: s 12(4) (amended by the Public Audit (Wales) Act 2004 Sch 1 para 11). Before prescribing a scale of fees under the Local Government Act 1999 s 12A the Auditor General for Wales must consult the Secretary of State and the Welsh Ministers and person appearing to the Auditor General for Wales to represent best value authorities which may be inspected under s 10A: s 12A(4) (as so added). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 See the Local Government Act 1999 ss 12(2), 12A(2) (as added: see note 2).

4 See the Local Government Act 1999 ss 12(3), 12A(3) (as added: see note 2).

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702. Reports.

Where the Audit Commission or the Auditor General for Wales¹ has carried out an inspection of an authority², it must issue a report³. A report (1) must mention any matter in respect of which the Audit Commission, or the Auditor General for Wales, believes as a result of the inspection that the authority is failing to comply with the requirements of Part 1 of the Local Government Act 1999⁴; and (2) may, if it mentions a matter under head (1) above, recommend that the Secretary of State, or the Welsh Ministers⁵ give a direction⁶. If a report relates to any extent to the administration of housing benefit or council tax benefit and the Commission thinks fit to do so, it must as soon as reasonably practicable send a copy of the report to the Secretary of State or the Welsh Ministers⁷.

The Audit Commission, or the Auditor General for Wales, must send a copy of a report to the authority concerned, and may publish a report and any information in respect of a report⁸.

If a report states that the Auditor General for Wales believes as a result of an inspection that a Welsh best value authority⁹ is failing to comply with the statutory requirements¹⁰, the next performance plan¹¹ prepared by the authority¹² must record that fact¹³, and also any action taken by the authority as a result of the report¹⁴.

1 As to the Audit Commission see PARA 744 et seq. As to the Auditor General for Wales see PARA 796 et seq.

2 Ie where the Audit Commission has carried out an inspection under the Local Government Act 1999 s 10 or the Auditor General for Wales has carried out an inspection under s 10A (see PARA 699).

3 See the Local Government Act 1999 ss 13(1), 13A(1) (s 13A added by the Public Audit (Wales) Act 2004 Sch 1 para 13).

4 See the Local Government Act 1999 ss 13(2)(a), 13A(2)(a) (s 13A as added: see note 3). The requirements referred to in the text are those of Pt I (ss 1-29).

5 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

6 See the Local Government Act 1999 ss 13(2)(b), 13A(2)(b) (s 13A as added: see note 3). Such a direction is given under s 15: see PARA 694. If a report recommends that the Secretary of State, or the Welsh Ministers, give

a direction under s 15 (see PARA 694), the Audit Commission, or the Auditor General for Wales, must as soon as reasonably practicable arrange for the recommendation to be published, and send a copy of the report to the Secretary of State or the Welsh Ministers: ss 13(4), 13A(4) (s 13A(4) as so added).

7 See the Local Government Act 1999 ss 13(4A), 13A(4A) (s 13(4A) added by the Local Government and Public Involvement in Health Act 2007 s 147(1); s 13A as added (see note 3); and s 13A(4A) added by the Welfare Reform Act 2007 s 38(1)).

8 See the Local Government Act 1999 ss 13(3), 13A(3) (s 13A as added: see note 3).

9 As to Welsh best value authorities see PARA 704.

10 Ie the requirements of the Local Government Act 1999 Pt 1.

11 As to performance plans see PARA 706.

12 Ie under the Local Government Act 1999 s 6 (see PARA 706).

13 Local Government Act 1999 s 13A(5)(a) (as added: see note 3).

14 Local Government Act 1999 s 13A(5)(b) (as added: see note 3).

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(iv) Wales

A. INTRODUCTION

703. Overview.

The Local Government Act 1999 sets out a best value regime which, following amendments by the Local Government and Public Involvement in Health Act 2007, now only applies, in a modified form, to Wales¹. As from a day to be appointed this regime is replaced by Part 1 of the Local Government (Wales) Measure 2009².

1 See PARAS 704-710.

2 See PARAS 711-731.

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B. WELSH BEST VALUE AUTHORITIES

704. Welsh best value authorities.

Until a day to be appointed the following provisions have effect¹. For the purposes of the Local Government Act 1999 Part 1² each of the following is a Welsh best value authority³:

- 652 (1) a local authority in Wales⁴;
- 653 (2) a national park authority for a national park in Wales⁵;
- 654 (3) a fire and rescue authority in Wales⁶.

The Welsh Ministers may by order provide that any of the following bodies is a Welsh best value authority⁷:

- 655 (a) a levying body⁸ in respect of which the county council or charging authority⁹ was a council or authority for an area in Wales¹⁰;
- 656 (b) a body to which provisions on special levies apply¹¹ and which as regards the financial year beginning in 1989 had power to levy a rate by reference to property in Wales¹².

The Welsh Ministers may by order provide that a Welsh best value authority specified, or of a description specified, in the order is not to be subject, in relation to such functions as may be specified, to a duty which is specified in the order, and to which the authority would otherwise be subject under the Local Government Act 1999 Part 1¹³.

1 The Local Government Act 1999 s 1(6), (7) are repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

2 Ie the Local Government Act 1999 ss 1-29.

3 Local Government Act 1999 s 1(6) (s 1(6), (7) added by the Public Audit (Wales) Act 2004 Sch 1 para 2; and amended by the Local Government and Public Involvement in Health Act 2007 s 144(1)(a)).

4 Local Government Act 1999 s 1(6)(a) (as added: see note 2). For these purposes 'local authority in Wales' means a county council, county borough council or community council in Wales: s 1(7) (as so added; amended by the Local Government and Public Involvement in Health Act 2007 s 136(1)(c)).

5 Local Government Act 1999 s 1(6)(b) (as added: see note 2).

6 Local Government Act 1999 s 1(6)(d) (as added: see note 2). The fire and rescue authority mentioned in the text refers to a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 (see **FIRE SERVICES**) or a scheme to which s 4 applies.

7 Local Government Act 1999 s 2A(1) (added by the Public Audit (Wales) Act 2004 Sch 1 para 3; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 4(1)-(4)). An order under the Local Government Act 1999 s 2A(1) providing for a body to be a Welsh best value authority may provide for s 7 (see **PARA 707**) to have effect in relation to that body with specified modifications: s 2A(3) (as so added; amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 4(4)). As to the Welsh Ministers see **PARA 97**.

8 Ie a levying body within the meaning of the Local Government Finance Act 1988 s 74(1) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) **PARA 530**).

9 Ie as referred to in the Local Government Finance Act 1988 s 74(1)(b) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) **PARA 530**).

10 Local Government Act 1999 s 2A(2)(a) (as added (see note 6); amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 4(5)(a)).

11 Ie a body to which the Local Government Finance Act 1988 s 75 applies (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) **PARA 530**).

12 Local Government Act 1999 s 2A(2)(b) (as added (see note 6); amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 4(5)(b)).

13 Local Government Act 1999 s 2A(4) (as added (see note 6); amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 4(3), (4)).

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705. Performance indicators and performance standards.

Until a day to be appointed the following provisions have effect¹. The Welsh Ministers² may by order specify³:

- 657 (1) factors ('performance indicators') by reference to which a Welsh best value authority's⁴ performance in exercising functions can be measured⁵;
- 658 (2) standards ('performance standards') to be met by Welsh best value authorities in relation to performance indicators specified under head (1) above⁶.

An order may specify different performance indicators or standards: (a) for different functions; (b) for different authorities or descriptions of authorities; (c) to apply at different times⁷.

Before specifying performance indicators or standards the Welsh Ministers must consult persons appearing to them to represent the Welsh best value authorities concerned, and such other persons (if any) as they think fit⁸.

In specifying performance indicators and standards, and in deciding whether to do so, the Welsh Ministers⁹: (i) must aim to promote improvement of the way in which the functions of Welsh best value authorities are exercised, having regard to a combination of economy, efficiency and effectiveness¹⁰; and (ii) must have regard to any recommendations made to them by the Auditor General for Wales¹¹.

In exercising a function a Welsh best value authority must meet any applicable performance standard specified under head (2) above¹².

1 The Local Government Act 1999 s 4 is repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

2 As to the Welsh Ministers see PARA 97.

3 Local Government Act 1999 s 4(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 6(2)). It seems that as a result of the amendments made to the Local Government Act 1999 s 4 by the Local Government and Public Involvement in Health Act 2007 orders made prior to that amendment in relation to England are now spent. However the Police Authorities (Best Value) Performance Indicators Order 2008, SI 2008/659 (under sub-s (1)(a)) continues in force until 2010 by virtue of savings provisions: see the Local Government and Public Involvement in Health Act 2007 (Commencement No 5 and Transitional, Saving and Transitory Provision) Order 2008, SI 2008/917, art 6(3). As to orders in force under the Local Government Act 1999 s 4 made in relation to Wales see the Fire and Rescue Authorities (Best Value Performance Indicators) (Wales) Order 2008, SI 2008/450; and the Local Government (Best Value Performance Indicators) (Wales) Order 2008, SI 2008/503.

4 As to Welsh best value authorities see PARA 704.

5 Local Government Act 1999 s 4(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(1)(a)).

6 Local Government Act 1999 s 4(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(1)(b)).

7 Local Government Act 1999 s 4(2) (amended by the Local Government Act 2003 Sch 3 para 5). As to the orders that have been made see note 2.

8 Local Government Act 1999 s 4(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(1), Sch 8 para 6(2), (3)).

9 Local Government Act 1999 s 4(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 6(2)).

10 Local Government Act 1999 s 4(4)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(2)(b)). As to the duty of a Welsh best value authority to improve the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness see PARA 689.

11 Local Government Act 1999 s 4(4)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 6(4)(b)).

12 Local Government Act 1999 s 4(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(1)).

UPDATE

705 Performance indicators and performance standards

NOTE 3--SI 2008/503 replaced: Local Government (Performance Indicators and Standards) (Wales) Order 2010, SI 2010/482.

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706. Best value performance plans.

Until a day to be appointed the following provisions have effect¹. A Welsh best value authority² must prepare a best value performance plan for each financial year³ in accordance with any order made or guidance issued for these purposes⁴.

The Welsh Ministers⁵ may by order specify matters which an authority must include in a plan for a financial year⁶. Such an order may make different provision in relation to different authorities or description of authority⁷. The Welsh Ministers may issue guidance on the form and content of plans and the manner in which they should be published⁸.

An authority must publish its plan for a financial year before 31 March of the previous financial year, or such other date as the Welsh Ministers may specify by order⁹.

1 The Local Government Act 1999 s 6 is repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

2 As to Welsh best value authorities see PARA 704.

3 For these purposes 'financial year' means a year beginning with 1 April: Local Government Act 1999 s 32.

4 Local Government Act 1999 s 6(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 139(3)). As to the power to make orders see further PARA 698. It seems that as a result of the amendments made to the Local Government Act 1999 s 6 by the Local Government and Public Involvement in Health Act 2007 all orders made prior to that amendment are now spent and at the date at which this volume states the law no orders are currently in force.

5 As to the Welsh Ministers see PARA 97.

6 Local Government Act 1999 s 6(2) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 7, Sch 18, Pt 8). In particular an order may require an authority:

- 37 (1) to summarise the authority's objectives in relation to the exercise of its functions (s 6(2)(a));
- 38 (2) to summarise any assessment made by the authority of the level at which and the way in which it exercises its functions (s 6(2)(b));
- 39 (3) to state any performance indicators, standards and targets specified or set in relation to the authority's functions (s 6(2)(e));
- 40 (4) to summarise the authority's assessment of its performance in the previous financial year with regard to performance indicators (s 6(2)(f));
- 41 (5) to compare that performance with the authority's performance in previous financial years or with the performance of other best value authorities (s 6(2)(g));
- 42 (6) to summarise its assessment of its success in meeting any performance standard which applied at any time in the previous financial year (s 6(2)(h));
- 43 (7) to summarise its assessment of its progress towards meeting any performance standard which has been specified but which does not yet apply (s 6(2)(i));
- 44 (8) to summarise its assessment of its progress towards meeting any performance target (s 6(2)(j));
- 45 (9) to summarise any plan of action to be taken in the financial year to which the plan relates for the purposes of meeting a performance target (s 6(2)(k)).

As to the orders that have been made see note 9. As to performance indicators and performance standards see PARA 705.

7 Local Government Act 1999 s 6(5) (added by the Local Government Act 2003 Sch 3 para 7).

8 Local Government Act 1999 s 6(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 7).

9 Local Government Act 1999 s 6(3) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 7). The majority of best value authorities must publish their improvement plan for a financial year by 31 October of the year to which the plan relates: see the Local Government (Improvement Plans) (Wales) Order 2006, SI 2006/615, art 2; and the Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2008, SI 2008/199, art 2.

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707. Audit of best value performance plans.

Until a day to be appointed the following provisions have effect¹. A performance plan² published by a Welsh best value authority³ for a financial year⁴ must be audited by the authority's auditor⁵. An audit of a performance plan is an inspection for the purpose of establishing whether the plan was prepared and published in accordance with the statutory requirements⁶ and any order or guidance under them⁷. An auditor appointed by the Auditor General for Wales who is carrying out such an audit of an authority's performance plan must have regard to any provisions of the relevant code of practice⁸ which are applicable to the audit, and are in force⁹.

In relation to an authority's performance plan the auditor must issue a report:

- 659 (1) certifying that he has audited the plan¹⁰;
- 660 (2) stating whether he believes that it was prepared and published in accordance with the statutory requirements¹¹ and any order or guidance under them¹²;
- 661 (3) if appropriate, recommending how it should be amended so as to accord with the statutory requirements¹³ and any order or guidance under them¹⁴;
- 662 (4) if appropriate, recommending procedures to be followed by the authority in relation to the plan¹⁵;
- 663 (5) recommending whether the Auditor General for Wales should carry out a best value inspection¹⁶ of the authority¹⁷;
- 664 (6) recommending whether the Welsh Ministers¹⁸ should give a direction¹⁹ to the authority²⁰.

An auditor must send a copy of his report relating to an authority's performance plan to the authority, to the Auditor General for Wales and if the report recommends that the Welsh Ministers give a direction²¹, to the Welsh Ministers²². Copies of a report must be sent by 30 June of the financial year to which the relevant performance plan relates, or by such other date as the Welsh Ministers may specify by order²³.

1 The Local Government Act 1999 ss 7, 8B are repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

2 As to performance plans see PARA 706.

3 As to Welsh best value authorities see PARA 704.

4 As to the meaning of 'financial year' see PARA 706 note 3.

5 Local Government Act 1999 s 7(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 8). Subject to the Local Government Act 1999 s 7(8) the references in s 7(1), (3A) to an authority's auditor are, in respect of a financial year, references to the auditor or auditors appointed to audit the authority's accounts for the previous financial year: s 7(7) (amended by Public Audit (Wales) Act 2004 Sch 1 para 5(8); and the Local Government and Public Involvement in Health Act 2007 Sch 8 para 9(8), Sch 18, Pt 8). If a person who would by virtue of the Local Government Act 1999 s 7(7) be an authority's auditor in respect of a financial year or one of an authority's auditors in respect of a financial year is no longer eligible for appointment under the Public Audit (Wales) Act 2004 s 14 (see PARA 802) or is not willing to act, the references in the Local Government Act 1999 s 7(1), (3A) to the authority's auditor are, in respect of that financial year, references to the auditor or auditors appointed in accordance with s 7(8A): s 7(8) (amended by the Public Audit (Wales) Act 2004 Sch 1 para 5(10), (11) and the Local Government and Public Involvement in Health Act 2007 Sch 8 para 9(9), Sch 18, Pt 8). The auditor or auditors must be appointed by the Auditor General for Wales and the Public Audit (Wales) Act 2004 must apply to such an appointment as if it were an appointment of a person to audit the authority's accounts under s 13 (see PARA 801): see the Local Government Act 1999 s 7(8A), (8B) (s 7(8A), (8B) added by the Public Audit (Wales) Act 2004 Sch 1 para 5(12); and the Local Government Act 1999 s 8(8A) amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 9(10), Sch 18, Pt 8).

The Public Audit (Wales) Act 2004 ss 18, 19 (auditor's rights to documents and information: see PARA 805) have effect in relation to the auditor's functions under the Local Government Act 1999 Pt 1 as they have effect in relation to his functions under the Public Audit (Wales) Act 2004 ss 12-40: Local Government Act 1999 s 7(3A) (added by the Public Audit (Wales) Act 2004 Sch 1 para 5(3); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 9(4), Sch 18, Pt 8).

6 Ie the Local Government Act 1999 s 6 (see PARA 706).

7 Local Government Act 1999 s 7(2).

8 Ie the Code of Practice issued under the Local Government Act 1999 s 8A (see PARA 708).

9 Local Government Act 1999 s 8B(2) (s 8B added by the Public Audit (Wales) Act 2004 Sch 1 para 7).

- 10 Local Government Act 1999 s 7(4)(a).
 - 11 See note 5.
 - 12 Local Government Act 1999 s 7(4)(b).
 - 13 See note 5.
 - 14 Local Government Act 1999 s 7(4)(c).
 - 15 Local Government Act 1999 s 7(4)(d).
 - 16 Ie under the Local Government Act 1999 s 10A: see PARA 699.
 - 17 Local Government Act 1999 s 7(4)(ea) (added by the Public Audit (Wales) Act 2004 Sch 1 para 5(5)).
 - 18 As to the Welsh Ministers see PARA 97.
 - 19 Ie under the Local Government Act 1999 s 15: see PARA 694.
 - 20 Local Government Act 1999 s 7(4)(f) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 8).
 - 21 Ie a direction under the Local Government Act 1999 s 15 (see PARA 694).
 - 22 Local Government Act 1999 s 7(5) (amended by the Public Audit (Wales) Act 2004 Sch 1 para 5(7); and the Local Government and Public Involvement in Health Act 2007 Sch 8 paras 8, 9(6)).
 - 23 Local Government Act 1999 s 7(6) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 8). In most cases copies of an auditor's report relating to an improvement plan must be sent in accordance with the Local Government Act 1999 s 7(5) by 30 November of the year to which the plan relates: see the Local Government (Improvement Plans) (Wales) Order 2006, SI 2006/615, art 3 and the Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2008, SI 2008/199, art 3.
- As to the power to make orders see further PARA 698.

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708. Duty of Auditor General for Wales to prepare a code of practice and prescribe fees.

Until a day to be appointed the following provisions have effect¹. The Auditor General for Wales may prepare, and keep under review, a code of practice prescribing the way in which auditors appointed by him are to carry out their functions² in relation to the audit of performance plans³.

The Auditor General for Wales must prescribe a scale or scales of fees in respect of the audit of performance plans which are required to be audited in accordance with the provisions of Part 1 of the Local Government Act 1999⁴ by auditors appointed by him⁵.

Before prescribing a scale of fees the Auditor General for Wales must consult the Welsh Ministers, and persons appearing to the Auditor General for Wales to represent Welsh best value authorities⁶.

¹ The Local Government Act 1999 s 8A is repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

² Ie under the Local Government Act 1999 s 7 (see PARA 707).

3 Local Government Act 1999 s 8A(1) (s 8A added by the Public Audit (Wales) Act 2004 Sch 1 para 7). As to performance plans see PARA 706. As to the duty of auditors appointed by the Auditor General for Wales to have regard to any code of practice see s 8B(2); and PARA 707. The Public Audit (Wales) Act 2004 s 16(2)-(9) (code of audit practice: see PARA 803) have effect in relation to a code of practice under the Local Government Act 1999 s 8A: s 8A(2) (as so added).

4 Ie the Local Government Act 1999 Pt 1 (ss 1-29).

5 Local Government Act 1999 s 8A(3) (s 8A as added: see note 2). The Public Audit (Wales) Act 2004 ss 20(4)-(6), 21(1)-(4) (fees for audit: see PARA 806) have effect in relation to fees under the Local Government Act 1999 s 8A(3): s 8A(4) (s 8A as added).

6 Local Government Act 1999 s 8A(5) (s 8A as added (see note 2); s 8(5) amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 11(a)). As to best value authorities in Wales see PARA 704.

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709. Response to audit.

Until a day to be appointed the following provisions have effect¹. A Welsh best value authority² must publish any report that it receives³ relating to its performance plan⁴. Where a best value authority receives a report which contains a recommendation⁵, the authority must prepare a statement of any action which it proposes to take as a result of the report, and its proposed timetable⁶. The authority must incorporate the statement in its next best value performance plan⁷. If the statement relates to a report which recommends that the Welsh Ministers⁸ give a direction⁹, the authority must send a copy of the statement to the Welsh Ministers¹⁰.

1 The Local Government Act 1999 s 9 is repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

2 As to best value authorities in Wales see PARA 704.

3 Ie in accordance with the Local Government Act 1999 s 7(5)(a) (see PARA 707).

4 See the Local Government Act 1999 s 9(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 paras 13(a)). As to performance plans see PARA 706.

5 Ie under any of the provisions of the Local Government Act 1999 s 7(4)(c)-(f) (see PARA 707).

6 Local Government Act 1999 s 9(2), (3). A statement required by s 9(3) must be prepared: (1) before the end of the period of 30 working days starting with the day on which the authority receives the report; or (2) if the report specifies a shorter period starting with that day, before the end of that period: s 9(4). For these purposes, a working day is a day other than: (a) a Saturday or a Sunday; (b) Christmas Day or Good Friday; or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales: s 9(7). See further **TIME**.

7 Local Government Act 1999 s 9(5).

8 As to the Welsh Ministers see PARA 97.

9 Ie under the Local Government Act 1999 s 15 (see PARA 694).

10 Local Government Act 1999 s 9(6) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 8 para 13(a)). The copy of the statement must be sent (1) before the end of the period of 30 working days starting with the day on which the authority receives the report; or (2) if the report specifies a shorter period starting with that day, before the end of that period: see s 9(6).

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710. Power of Welsh Ministers to modify enactments and confer new powers.

Until a day to be appointed the following provisions have effect¹. If the Welsh Ministers² think that an enactment prevents or obstructs compliance by Welsh best value authorities³ with the requirements of the Local Government Act 1999 Part 1⁴ they may by order make provision modifying or excluding the application of the enactment in relation to all Welsh best value authorities, particular Welsh best value authorities or particular descriptions of Welsh best value authority⁵.

The Welsh Ministers may by order make provision conferring on all Welsh best value authorities, particular Welsh best value authorities or particular descriptions of Welsh best value authority, any power which they consider necessary or expedient to permit or facilitate compliance with the requirements of that Part⁶.

Before the Welsh Ministers make an order under the above provisions they must consult such authorities or persons as appear to them to be representative of interests affected by their proposals⁷.

¹ The Local Government Act 1999 ss 17A, 17B are repealed by the Local Government (Wales) Measure 2009 Sch 4 as from a day to be appointed under s 53(2). At the date at which this volume states the law no such day had been appointed.

² As to the Welsh Ministers see PARA 97.

³ As to the meaning of 'Welsh best value authority' see PARA 704.

⁴ Ie the Local Government Act 1999 ss 1-29.

⁵ Local Government Act 1999 s 17A(1) (ss 17A, 17B added by the Local Government and Public Involvement in Health Act 2007 s 142(2)). An order under the Local Government Act 1999 s 17A may:

46 (1) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval) (s 17A(3)(a) (as so added));

47 (2) amend an enactment (s 17A(3)(b) (as so added));

48 (3) include consequential, incidental and transitional provision (s 17A(3)(c) (as so added));

49 (4) make different provision for different cases (s 17A(3)(d) (as so added)).

The power under heading (4) above includes, in particular, power to make different provision in relation to different authorities or descriptions of authority: s 17A(4) (as so added). At the date at which this volume states the law no such orders had been made.

⁶ Local Government Act 1999 s 17A(2) (as added: see note 5).

⁷ Local Government Act 1999 s 17B(1) (as added: see note 5).

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C. WELSH IMPROVEMENT AUTHORITIES

711. General duty.

As from a day to be appointed the following provisions have effect¹. A Welsh improvement authority² must make arrangements to secure continuous improvement in the exercise of its functions³. In discharging this duty an authority must have regard in particular to the need to improve the exercise of its functions in terms of strategic effectiveness, service quality, service availability, fairness, sustainability, efficiency and innovation⁴.

A Welsh improvement authority improves the exercise of its functions in terms of:

- 665 (1) strategic effectiveness, if it exercises its functions in a way which is reasonably likely to lead to the achievement of, or assist in achieving, any of its strategic objectives⁵;
- 666 (2) service quality, if there is an improvement in the quality of services⁶;
- 667 (3) availability, if there is an improvement in the availability of services⁷;
- 668 (4) fairness if disadvantages faced by particular groups in accessing, or taking full advantage of, services are reduced or social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised⁸;
- 669 (5) sustainability, if services are provided or functions are otherwise exercised in a way which contributes towards the achievement of sustainable development in the authority's area⁹;
- 670 (6) efficiency, if there is an improvement in the efficiency with which resources are used in the provision of services or in the way in which functions are otherwise exercised¹⁰;
- 671 (7) innovation, if the way in which services are provided or functions are otherwise exercised is altered in a manner which is reasonably likely to lead to any outcome described in heads (1) to (6) above¹¹.

After consulting persons appearing to them to represent the Welsh improvement authorities and such other person (if any) as they think fit, the Welsh Ministers may by order amend or omit or add to heads (1) to (7) above¹².

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 A 'Welsh improvement authority' is a county council and county borough council in Wales, a national park authority for a national park in Wales and a Welsh fire and rescue authority, that is an authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or to which s 4 (see **FIRE SERVICES**) applies: Local Government (Wales) Measure 2009 s 1.

3 Local Government (Wales) Measure 2009 s 2(1). In deciding how to discharge its duty under s 2(1) a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers: s 6. For the purposes of Pt 1 (ss 1-36), unless the context otherwise provides, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2). As to the consultation requirements of the Welsh improvement authority for the purpose of deciding how to fulfil its duties under s 2(1) see PARA 713. The Welsh Ministers:

- 50 (1) may issue guidance under Pt 1 to or in respect of Welsh improvement authorities generally or in respect of one or more particular authorities (s 48(1), (2)(a));
- 51 (2) may issue guidance under Pt 2 to or in respect of local authorities and community planning partners generally or in respect of one or more particular authorities or partners (s 48(1), (2)(b));

- 52 (3) may issue different guidance to or in respect of different Welsh improvement authorities, local authorities or community planning partners (s 48(1), (2)(c));
- 53 (4) must, before they issue guidance, consult the authorities or partners concerned or persons appearing to the Welsh Ministers to represent them (s 48(1), (2)(d)); and
- 54 (5) must arrange for guidance to be published (s 48(1), (2)(e)).

4 Local Government (Wales) Measure 2009 s 2(2).

5 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(a). A Welsh improvement authority's strategic objectives are:

- 55 (1) in the case of a county council or a county borough council, the community strategy objectives contained in the current community strategy for the authority's area (s 4(3)(a));
- 56 (2) in the case of a national park authority any relevant community strategy objectives and where the authority's National Park Management Plan includes objectives for the authority to meet in the exercise of its functions, those objectives (s 4(3)(b));
- 57 (3) in the case of a Welsh fire and rescue authority any relevant community strategy objectives and where the authority has decided to set itself objectives in response to guidance contained in the Fire and Rescue National Framework, those objectives (s 4(3)(c)).

'Current community strategy' means the community strategy for a local authority's area published under s 39(4) (see PARA 394) or, where the strategy has been amended following a review under s 41 (see PARA 395), the strategy most recently published under s 41(6): s 4(4)(a). 'Fire and Rescue National Framework' means the Framework prepared by the Welsh Ministers and having effect under the Fire and Rescue Services Act 2004 s 21 (see **FIRE SERVICES**) (including any revisions to the Framework which have effect under s 21): Local Government (Wales) Measure 2009 s 4(4)(b). 'National Park Management Plan' means the plan published by a national park authority under the Environment Act 1995 s 66 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 643) (including any amendments to the plan published under s 66(6)). 'Relevant community strategy objective' means an objective that is contained within a current community strategy the production of which involved the authority as a community planning partner (within the meaning of the Local Government (Wales) Measure 2009 s 38 (see PARA 393)) and is connected with the authority's functions: s 4(4)(d). A reference to services is to: (a) services provided by the authority in the exercise of its functions; (b) services provided by any other person under arrangements made by the authority in the exercise of its functions: s 4(4)(e).

6 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(b).

7 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(c).

8 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(d).

9 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(e).

10 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(f).

11 Local Government (Wales) Measure 2009 ss 2(3), 4(2)(g).

12 See the Local Government (Wales) Measure 2009 s 7. At the date at which this volume states the law no such orders had been made.

UPDATE

711 General duty

NOTES--Local Government (Wales) Measure 2009 ss 1, 2(2), (3), 4, 6, 7, 35(2) in force 17 July 2009: SI 2009/1796. Local Government (Wales) Measure 2009 s 48 in force 10 June 2009: s 53.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(2) BEST VALUE AND PERFORMANCE/(iv) Wales/C. WELSH IMPROVEMENT AUTHORITIES/712. Improvement objectives.

712. Improvement objectives.

As from a day to be appointed the following provisions have effect¹. For each financial year², a Welsh improvement authority³ must set itself objectives for improving the exercise of its functions during that year ('improvement objectives')⁴. A Welsh improvement authority must make arrangements to secure achievement of its improvement objectives⁵. An improvement function must be famed so as to improve the exercise of the function or functions to which it relates in terms of at least one of the following: (1) strategic effectiveness⁶; (2) service quality⁷; (3) service availability⁸; (4) fairness⁹; (5) sustainability¹⁰; (6) efficiency¹¹; and (7) innovation¹².

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 'Financial year' means a year beginning with 1 April: Local Government (Wales) Measure 2009 s 35(1).

3 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 Local Government (Wales) Measure 2009 s 3(1). In deciding how to discharge its duty under s 3(1) and s 3(2) a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers: s 6. As to the consultation requirements of the Welsh improvement authority for the purpose of deciding how to fulfil its duties under s 3(1) see PARA 713. For the purposes of Pt 1 (ss 1-36), unless the context otherwise provides, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2). As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

5 Local Government (Wales) Measure 2009 s 3(2). See note 4.

6 Local Government (Wales) Measure 2009 s 3(3)(a). As to the meaning of 'strategic effectiveness' see PARA 711 head (1) (definition applied by s 3(4)).

7 Local Government (Wales) Measure 2009 s 3(3)(b). As to the meaning of 'service quality' see PARA 711 head (2) (definition applied by s 3(4)).

8 Local Government (Wales) Measure 2009 s 3(3)(c). As to the meaning of 'service availability' see PARA 711 head (3) (definition applied by s 3(4)).

9 Local Government (Wales) Measure 2009 s 3(3)(d). As to the meaning of 'fairness' see PARA 711 head (4) (definition applied by s 3(4)).

10 Local Government (Wales) Measure 2009 s 3(3)(e). As to the meaning of 'sustainability' see PARA 711 head (5) (definition applied by s 3(4)).

11 Local Government (Wales) Measure 2009 s 3(3)(f). As to the meaning of 'efficiency' see PARA 711 head (6) (definition applied by s 3(4)).

12 Local Government (Wales) Measure 2009 s 3(3)(g). As to the meaning of 'innovation' see PARA 711 head (7) (definition applied by s 3(4)).

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713. Consultation.

As from a day to be appointed the following provisions have effect¹. For the purpose of deciding how to fulfil the general duty and improvement objectives² a Welsh improvement authority³ must consult⁴:

- 672 (1) representatives⁵ of persons resident in the authority's area⁶;
- 673 (2) representatives of persons liable to pay non-domestic rates in respect of any area within which the authority carries out functions⁷;
- 674 (3) representatives of persons who use or are likely to use services provided by the authority⁸; and
- 675 (4) representatives of persons appearing to the authority to have an interest in any area within which the authority carries out functions⁹.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 711.

2 To fulfil the duties under ss 2(1), 3(2) (see PARAS 711, 712).

3 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 In deciding who to consult under the Local Government (Wales) Measure 2009 s 5, or the form, content and timing of consultations under s 5, a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers: s 6. As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

5 'Representatives' in relation to a group of persons means persons who appear to the authority to be representative of that group: Local Government (Wales) Measure 2009 s 5(2).

6 Local Government (Wales) Measure 2009 s 5(1)(a).

7 Local Government (Wales) Measure 2009 s 5(1)(b).

8 Local Government (Wales) Measure 2009 s 5(1)(c).

9 Local Government (Wales) Measure 2009 s 5(1)(d).

UPDATE

713 Consultation

NOTES--Local Government (Wales) Measure 2009 s 5 in force 17 July 2009: SI 2009/1796.

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714. Performance indicators and standards.

As from a day to be appointed the following provisions have effect¹. The Welsh Ministers may by order² specify:

- 676 (1) factors ('performance indicators') by reference to which a Welsh improvement authority's³ performance in exercising functions⁴ can be measured⁵;

- 677 (2) standards ('performance standards') to be met by Welsh improvement authorities in relation to performance indicators specified under head (1) above⁶.

Before specifying performance indicators or standards the Welsh Ministers must consult persons appearing to them to represent the authorities concerned, the Auditor General for Wales⁷ and such other persons (if any) as they think fit⁸.

In deciding whether to specify performance indicators and standards, and in deciding them, the Welsh Ministers must aim to promote improvement of the exercise of the functions of Welsh improvement authorities⁹. In particular, the Welsh Ministers must be concerned with the need to improve the exercise of those functions in terms of at least one of the following: (1) strategic effectiveness¹⁰; (2) service quality¹¹; (3) service availability¹²; (4) fairness¹³; (5) sustainability¹⁴; (6) efficiency¹⁵; and (7) innovation¹⁶.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 An order may specify different performance indicators or standards (1) for different functions; (2) for different authorities or descriptions of authority; (3) to apply at different times: Local Government (Wales) Measure 2009 s 8(2). At the date at which this volume states the law no such orders have been made.

3 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 For the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-36), unless the context otherwise provides, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2).

5 Local Government (Wales) Measure 2009 s 8(1)(a).

6 Local Government (Wales) Measure 2009 s 8(1)(b). A Welsh improvement authority must make arrangements to exercise its functions so that any applicable performance standard specified under s 8(1)(b) is met: s 8(7).

7 As to the Auditor General for Wales see PARA 796 et seq.

8 Local Government (Wales) Measure 2009 s 8(3).

9 Local Government (Wales) Measure 2009 s 8(4).

10 Local Government (Wales) Measure 2009 s 8(5)(a). As to the meaning of 'strategic effectiveness' see PARA 711 head (1) (definition applied by s 8(6)).

11 Local Government (Wales) Measure 2009 s 8(5)(b). As to the meaning of 'service quality' see PARA 711 head (2) (definition applied by s 8(6)).

12 Local Government (Wales) Measure 2009 s 8(5)(c). As to the meaning of 'service availability' see PARA 711 head (3) (definition applied by s 8(6)).

13 Local Government (Wales) Measure 2009 s 8(5)(d). As to the meaning of 'fairness' see PARA 711 head (4) (definition applied by s 8(6)).

14 Local Government (Wales) Measure 2009 s 8(5)(e). As to the meaning of 'sustainability' see PARA 711 head (5) (definition applied by s 8(6)).

15 Local Government (Wales) Measure 2009 s 8(5)(f). As to the meaning of 'efficiency' see PARA 711 head (6) (definition applied by s 8(6)).

16 Local Government (Wales) Measure 2009 s 8(5)(g). As to the meaning of 'innovation' see PARA 711 head (7) (definition applied by s 8(6)).

UPDATE

714 Performance indicators and standards

NOTES--Local Government (Wales) Measure 2009 ss 8, 35(2) in force 17 July 2009: SI 2009/1796.

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715. Powers to collaborate and delegate.

As from a day to be appointed the following provisions have effect¹. For the purpose of discharging, or facilitating the discharge, of its duties regarding the making of arrangements to secure continuous improvement in the exercise of its functions², to secure achievement of its improvement objectives³ and to exercise its functions to ensure any applicable performance standard is met⁴ or the duties of another Welsh improvement authority⁵ in relation to those duties, a Welsh improvement authority has the following powers⁶. The powers are:

- 678 (1) to provide financial assistance to any person⁷;
- 679 (2) to enter into arrangements or agreements with any person⁸;
- 680 (3) to co-operate with, or facilitate or co-ordinate the activities of, any person⁹;
- 681 (4) to exercise on behalf of any person any functions of that person¹⁰; and
- 682 (5) to provide staff, goods, services or accommodation to any person¹¹.

A Welsh improvement authority must from time to time consider whether the exercise of any of its powers of collaboration¹² would assist it to discharge its duties¹³ and if it concludes that the exercise of a power of collaboration would assist it to comply with those duties it must seek to exercise, or cause to be exercised, the power¹⁴.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 I.e its duties under the Local Government (Wales) Measure 2009 s 2(1) (see PARA 711).

3 I.e its duties under the Local Government (Wales) Measure 2009 s 3(2) (see PARA 712).

4 I.e its duties under the Local Government (Wales) Measure 2009 s 8(7) (see PARA 714).

5 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

6 Local Government (Wales) Measure 2009 s 9(1). Section 9 is without prejudice to any other power of a Welsh improvement authority: s 9(3). For the purpose of discharging or facilitating the discharge by a Welsh fire and rescue authority of its duties under ss 2(1), 3(2) and 8(7), the Local Government Act 1972 s 101(1)(b), (5) (arrangements for discharge of functions by local authorities: see PARAS 369 et seq) has effect as if the authority were a local authority for the purposes of that provision: Local Government (Wales) Measure 2009 s 10(1). Section 10 is without prejudice to any other power of a Welsh fire and rescue authority: s 10(2).

7 Local Government (Wales) Measure 2009 s 9(2)(a).

8 Local Government (Wales) Measure 2009 s 9(2)(b).

9 Local Government (Wales) Measure 2009 s 9(2)(c).

10 Local Government (Wales) Measure 2009 s 9(2)(d).

11 Local Government (Wales) Measure 2009 s 9(2)(e).

12 For the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-36) a reference to a Welsh improvement authority's 'powers of collaboration' is a reference to the following:

58 (1) the Welsh improvement authority's powers under s 9 (s 11(1)(a));

59 (2) in the case of a county council or county borough council, its powers under the Local Government Act 1972 s 101(1)(b), (5) (arrangements for discharge of functions by local authorities: see PARAS 369 et seq), a power of the executive of the authority (or a committee or specified member of the executive) to make arrangements for the discharge of its functions under regulations made under the Local Government Act 2000 s 19(1) (discharge of functions of and by another local authority: see PARA 361), a power of the authority to make arrangements for the discharge of their functions under regulations made under the Local Authority Act 2000 s 19(2) (Local Government (Wales) Measure 2009 s 11(1)(b));

60 (3) a power of the Welsh improvement authority to authorise a person (or the person's employees) to exercise a function on the authority's behalf under an order made under the Deregulation and Contracting Out Act 1994 s 70 (see PARA 407) (Local Government (Wales) Measure 2009 s 11(1)(c));

61 (4) in the case of a Welsh fire and rescue authority, its powers under the Local Government Act 1972 s 101(1)(b), (5) (as given effect in relation to the authority by the Local Government (Wales) Measure 2009 s 10) (s 11(1)(d));

62 (5) in the case of a national park authority, its powers under the Local Government Act 1972 s 101(1)(b), (5) (as given effect in relation to the authority by the Environment Act 1995 Sch 7 para 13) (Local Government (Wales) Measure 2009 s 11(1)(e)).

As to the meaning of 'executive' in head (2) above see the Local Government Act 2000 Pt II; and PARA 327 (definition applied by the Local Government (Wales) Measure 2009 s 11(2)).

13 In its duties under the Local Government (Wales) Measure 2009 ss 2(1), 3(2), 8(7) (see PARAS 711, 712, 714).

14 Local Government (Wales) Measure 2009 s 12.

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716. Collection of information relating to performance.

As from a day to be appointed the following provisions have effect¹. A Welsh improvement authority must make arrangements for²:

- 683 (1) the collection of information which will allow it to assess whether it has met during a financial year³ those improvement objectives⁴ which are applicable to that year⁵;
- 684 (2) the collection of information which will allow it to measure its performance during a financial year by reference to those performance indicators⁶ which are applicable to the authority for that year⁷;
- 685 (3) the collection of information which will allow it to assess whether it has met during a financial year those performance standards⁸ which are applicable to the authority for that year⁹;

- 686 (4) the collection of information which will allow it to measure its performance during a financial year by reference to those self-imposed performance indicators¹⁰ which are applicable to that year¹¹;
- 687 (5) the collection of information which will allow it to assess whether it has met during a financial year those self-imposed performance standards¹² which are applicable to that year¹³.

In discharging its duty under the above provisions a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers¹⁴.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2. As to the use of the information collected see PARA 717.

3 As to the meaning of 'financial year' see PARA 712 note 2.

4 As to the meaning of 'improvement objectives' see PARA 712.

5 Local Government (Wales) Measure 2009 s 13(1)(a).

6 As to the meaning of 'performance indicators' see PARA 714.

7 Local Government (Wales) Measure 2009 s 13(1)(b)(i).

8 As to the meaning of 'performance standards' see PARA 714.

9 Local Government (Wales) Measure 2009 s 13(1)(b)(ii).

10 A self-imposed performance indicator is a factor by reference to which a Welsh improvement authority has decided to measure its performance in exercising its functions: Local Government (Wales) Measure 2009 s 13(2)(a).

11 Local Government (Wales) Measure 2009 s 13(1)(c)(i).

12 A self-imposed performance standard is a standard which a Welsh improvement authority has decided to meet in relation to a self-imposed performance indicator: Local Government (Wales) Measure 2009 s 13(2)(b).

13 Local Government (Wales) Measure 2009 s 13(1)(c)(ii).

14 Local Government (Wales) Measure 2009 s 14(3). As to guidance by the Welsh Ministers see s 48; and PARA 711 note 3.

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717. Use of performance information.

As from a day to be appointed the following provisions have effect¹. A Welsh improvement authority² must use the information it collects relating to performance³ to compare its performance in exercising the functions⁴ to which the information relates with its performance in exercising those or similar functions during previous financial years⁵ and, so far as is reasonably practicable, the performance of other Welsh improvement authorities and other

public authorities in exercising those or similar functions during the financial year to which the information relates and during previous financial years⁶.

A Welsh improvement authority must use the information it collects relating to performance⁷ to assess whether it could improve its performance in exercising its functions and, in the light of that assessment, decide what steps it will take with a view to improving its performance in exercising its functions⁸.

In discharging its duty under the above provisions a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers⁹.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

3 Ie the information it collects under the Local Government (Wales) Measure 2009 s 13 (see PARA 716).

4 For the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-36), unless the context otherwise requires, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2). As to the publication of performance information see PARA 718.

5 Local Government (Wales) Measure 2009 s 14(1)(a). As to the meaning of 'financial year' see PARA 712 note 2.

6 Local Government (Wales) Measure 2009 s 14(1)(b).

7 Ie the information it collects under the Local Government (Wales) Measure 2009 s 13 (see PARA 716).

8 Local Government (Wales) Measure 2009 s 14(2).

9 Local Government (Wales) Measure 2009 s 14(3). As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

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718. Improvement planning and publication of improvement information.

As from a day to be appointed the following provisions have effect¹. A Welsh improvement authority must make arrangements² for the publication of:

- 688 (1) the authority's assessment of its performance during a financial year³: (a) in discharging its duty⁴ to make arrangements to secure continuous improvement in the exercise of its functions⁵; (b) in meeting the improvement objectives it has set itself⁶ which are applicable to that year⁷; (c) by reference to performance indicators⁸ and self-imposed performance indicators which are applicable to that year⁹; (d) in meeting performance standards¹⁰ and self-imposed performance standards which are applicable to that year¹¹;
- 689 (2) the authority's assessment of its performance in exercising its functions during a financial year as compared with its performance in previous financial years and, so far as is reasonable, the performance during that and previous financial years of other Welsh improvement authorities and other public authorities (to the

- extent that those authorities exercise similar functions to those exercised by the authority)¹²;
- 690 (3) details of the ways in which the authority has during a financial year exercised its powers of collaboration for the purpose of discharging or facilitating the discharge of specific duties¹³ during that year¹⁴;
- 691 (4) details of the information collected¹⁵ in respect of a financial year and what the authority has done to discharge its duties¹⁶ in relation to that year¹⁷;
- 692 (5) a summary of any special report¹⁸ in respect of the authority issued¹⁹;
- 693 (6) a description of the authority's plans for discharging specific duties²⁰ in a financial year together with, if the authority thinks fit, its plans for subsequent years (an 'improvement plan')²¹.

A Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers about the discharge of its duties under the above provisions²².

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 The arrangements under the Local Government (Wales) Measure 2009 s 15(2), (4) must be framed so that the information, or the summary, is published before 31 October in the financial year following that to which the information relates or such other date as the Welsh Ministers may specify by order: see s 15(3), (5). At the date at which this volume states the law no such order had been made. As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

3 As to the meaning of 'financial year' see PARA 712 note 2.

4 Ie in discharging its duty under the Local Government (Wales) Measure 2009 s 2 (see PARA 711).

5 Local Government (Wales) Measure 2009 s 15(1), (2)(a)(i). For the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-36), unless the context otherwise requires, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2).

6 Ie the improvement objectives it has set itself under the Local Government (Wales) Measure 2009 s 3 (see PARA 712).

7 Local Government (Wales) Measure 2009 s 15(1), (2)(a)(ii).

8 As to the meaning of 'performance indicators' see PARA 714.

9 Local Government (Wales) Measure 2009 s 15(1), (2)(a)(iii).

10 As to the meaning of 'performance standards' see PARA 714.

11 Local Government (Wales) Measure 2009 s 15(1), (2)(a)(iv).

12 Local Government (Wales) Measure 2009 s 15(1), (2)(b).

13 Ie its duties under the Local Government (Wales) Measure 2009 ss 2(1), 3(2), 8(7) (see PARAS 711, 712, 714).

14 Local Government (Wales) Measure 2009 s 15(1), (2)(c).

15 Ie the information collected under the Local Government (Wales) Measure 2009 s 13 (see PARA 716).

16 Ie under the Local Government (Wales) Measure 2009 s 14 (see PARA 717).

17 Local Government (Wales) Measure 2009 s 15(1), (2)(d).

18 Ie a report issued under the Local Government (Wales) Measure 2009 s 23 (see PARA 723).

19 Local Government (Wales) Measure 2009 s 15(4).

20 le its duties under the Local Government (Wales) Measure 2009 ss 2(1), 3(2), 8(7) (see PARAS 711, 712, 714).

21 Local Government (Wales) Measure 2009 s 15(6). Those arrangements must be framed so that the information is published as soon as is reasonably practicable after the start of the financial year to which the plan must relate or as soon as is reasonably practicable after such other date as the Welsh Ministers may specify by order: s 15(7). At the date at which this volume states the law no such order had been made.

22 Local Government (Wales) Measure 2009 s 15(8). Without prejudice to the generality of s 15(8) guidance issued under that provision may address: (1) the manner in which assessments of performance are to be carried out; (2) the making of an improvement plan including the procedure to be followed: s 15(9). As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

UPDATE

718 Improvement planning and publication of improvement information

NOTE 22--Local Government (Wales) Measure 2009 s 15(8), (9) in force 17 July 2009: SI 2009/1796.

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719. Improvement information and planning: audit.

As from a day to be appointed the following provisions have effect¹. In respect of each financial year², the Auditor General for Wales³ must carry out an audit for the purpose of determining whether a Welsh improvement authority⁴ has during that year discharged its duties in respect of the publishing of improvement information⁵ and the extent to which the authority has during that year acted in accordance with any guidance issued⁶ regarding the discharge of those duties⁷.

The Auditor General for Wales must prescribe scales of fees in respect of audits carried out under the above provisions⁸.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'financial year' see PARA 712 note 2.

3 As to the Auditor General for Wales see PARA 796 et seq.

4 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

5 le its duties under the Local Government (Wales) Measure 2009 s 15(1)-(7) (see PARA 718).

6 le under the Local Government (Wales) Measure 2009 s 15(8) (see PARA 718). As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

7 Local Government (Wales) Measure 2009 s 17.

8 Local Government (Wales) Measure 2009 s 27(1)(a). Different scales may be prescribed in respect of the different activities described in s 27(1), different types of the same activity and different types of Welsh improvement authority: s 27(2). An authority audited, assessed or inspected as mentioned in s 27(1) must,

subject to s 27(4), pay to the Auditor General for Wales the fee payable under the appropriate scale: s 27(3). If it appears to the Auditor General that the work involved in a particular audit, assessment or inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in s 27(3): s 27(4). Before prescribing a scale of fees under this section the Auditor General must consult the Welsh Ministers and persons appearing to the Auditor General to represent authorities which may be audited, assessed or inspected as mentioned in s 27(1): s 27(5). The Public Audit (Wales) Act 2004 has effect in relation to a scale or scales of fees prescribed by the Auditor General under the Local Government (Wales) Measure 2009 s 28 as it has effect in relation to a scale or scales prescribed under the Public Audit (Wales) Act 2004 s 20(1) subject to modifications: see s 27(6).

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720. Improvement assessments.

As from a day to be appointed the following provisions have effect¹. In respect of each financial year², the Auditor General for Wales³ must carry out an assessment for the purpose of determining whether a Welsh improvement authority⁴ is likely during that year to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1⁵. In conjunction with such an assessment, the Auditor General may carry out an assessment for the purpose of determining whether the Welsh improvement authority is likely to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1 in subsequent financial years⁶.

The Auditor General for Wales must prescribe scales of fees in respect of assessments carried out under the above provisions⁷.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'financial year' see PARA 712 note 2.

3 As to the Auditor General for Wales see PARA 796 et seq.

4 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

5 Local Government (Wales) Measure 2009 s 18(1).

6 Local Government (Wales) Measure 2009 s 18(2).

7 Local Government (Wales) Measure 2009 s 27(1)(b). Different scales may be prescribed in respect of the different activities described in s 27(1), different types of the same activity and different types of Welsh improvement authority: s 27(2). An authority audited, assessed or inspected as mentioned in s 27(1) must, subject to s 27(4), pay to the Auditor General for Wales the fee payable under the appropriate scale: s 27(3). If it appears to the Auditor General that the work involved in a particular audit, assessment or inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in s 27(3): s 27(4). Before prescribing a scale of fees under this section the Auditor General must consult the Welsh Ministers and persons appearing to the Auditor General to represent authorities which may be audited, assessed or inspected as mentioned in s 27(1): s 27(5). The Public Audit (Wales) Act 2004 has effect in relation to a scale or scales of fees prescribed by the Auditor General under the Local Government (Wales) Measure 2009 s 27 as it has effect in relation to a scale or scales prescribed under the Public Audit (Wales) Act 2004 s 20(1) subject to modifications: see s 27(6).

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721. Audit and assessment reports.

As from a day to be appointed the following provisions have effect¹. Each financial year², the Auditor General for Wales³ must issue a report or reports in respect of each Welsh improvement authority⁴:

- 694 (1) certifying that the Auditor General has carried out an audit⁵ in respect of the previous financial year⁶;
- 695 (2) stating whether as a result of the audit the Auditor General believes that the authority has discharged its duties in respect of publishing improvement information⁷ and that the authority has acted in accordance with any guidance⁸ issued⁹;
- 696 (3) certifying that the Auditor General has carried out an improvement assessment¹⁰ in respect of the financial year¹¹;
- 697 (4) describing the extent to which information and documents provided to the Auditor General in respect of an information sharing group¹² have been taken into account in carrying out that assessment¹³;
- 698 (5) stating whether as a result of the assessment the Auditor General believes that the authority is likely to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1 during the financial year¹⁴;
- 699 (6) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending action that the authority should take in order to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1 or act in accordance with guidance issued in respect of the publication of improvement information¹⁵ (whether in respect of that or a subsequent financial year)¹⁶;
- 700 (7) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending that the Welsh Ministers should: (a) provide assistance to the authority by exercising their power under to provide such support¹⁷; (b) give a direction¹⁸ and, if so, the type of direction¹⁹;
- 701 (8) stating whether, in the light of an audit or assessment, the Auditor General is minded to carry out a special inspection²⁰.

The Auditor General must send a copy of any report issued under the above provisions to the authority concerned and the Welsh Ministers²¹.

Where any such report received by a Welsh improvement authority contains a recommendation under head (6) or (7) above or states under head (8) above that the Auditor General for Wales is minded to carry out a special inspection the following provisions apply²².

The authority must prepare a statement of any action which it proposes to take as a result of the report and its proposed timetable for taking that action²³. The authority must incorporate a the statement in its improvement plan for the next financial year²⁴.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'financial year' see PARA 712 note 2.

- 3 As to the Auditor General for Wales see PARA 796 et seq.
- 4 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2. If the report recommends that the Welsh Ministers give a direction under the Local Government (Wales) Measure 2009 s 29 (see PARA 729), the authority must send a copy of the statement to the Welsh Ministers before the end of the period of 30 working days starting with the day on which the authority receives the report or if the report specifies a shorter period starting with that day, before the end of that period: s 20(5). For the purposes of s 20 a working day is a day other than a Saturday or Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales: Local Government (Wales) Measure 2009 s 20(6).
- 5 le an audit under the Local Government (Wales) Measure 2009 s 17 (see PARA 719).
- 6 Local Government (Wales) Measure 2009 s 19(1)(a).
- 7 le its duties under the Local Government (Wales) Measure 2009 s 15(1)-(7) (see PARA 718).
- 8 le guidance issued under the Local Government (Wales) Measure 2009 s 15(8) (see PARA 718).
- 9 Local Government (Wales) Measure 2009 s 19(1)(b).
- 10 le an assessment under the Local Government (Wales) Measure 2009 s 18 (see PARA 720).
- 11 Local Government (Wales) Measure 2009 s 19(1)(c).
- 12 le information and documents providing under the Local Government (Wales) Measure 2009 s 33 (see PARA 731).
- 13 Local Government (Wales) Measure 2009 s 19(1)(d).
- 14 Local Government (Wales) Measure 2009 s 19(1)(e).
- 15 le guidance issued under the Local Government (Wales) Measure 2009 s 15(8) (see PARA 718).
- 16 Local Government (Wales) Measure 2009 s 19(1)(f).
- 17 le under the Local Government (Wales) Measure 2009 s 28 (see PARA 728). As to the Welsh Ministers see PARA 97.
- 18 le a direction under the Local Government (Wales) Measure 2009 s 29 (see PARA 729).
- 19 Local Government (Wales) Measure 2009 s 19(1)(g).
- 20 Local Government (Wales) Measure 2009 s 19(1)(h). A special inspection referred to in the text is one under s 21 (see PARA 722).
- 21 Local Government (Wales) Measure 2009 s 19(2). Copies of a report must be sent in accordance with s 19(2) by 30 November in the financial year during which the audit was carried out or to which the assessment relates or by such other date as the Welsh Ministers may specify by order: s 19(3). At the date at which this volume states the law no such order had been made. But the Welsh Ministers may by direction set a date for the sending of a report in relation to a specified Welsh improvement authority which differs from the date which would otherwise apply under s 19(3) if the Auditor General for Wales has requested that the Welsh Ministers give such a direction and in the opinion of the Welsh Ministers, the circumstances are exceptional: s 19(4).
- 22 Local Government (Wales) Measure 2009 s 20(1).
- 23 Local Government (Wales) Measure 2009 s 20(2). A statement required by s 20(2) must be prepared before the end of the period of 30 working days starting with the day on which the authority receives the report or if the report specifies a shorter period starting with that day, before the end of that period: s 20(3).
- 24 Local Government (Wales) Measure 2009 s 20(4).

722. Special inspections.

As from a day to be appointed the following provisions have effect¹. The Auditor General for Wales² may carry out an inspection of a Welsh improvement authority's³ compliance with the requirements of the Local Government (Wales) Measure 2009 Part 1⁴ if the Auditor General is of the opinion that the authority may fail to comply with the requirements of Part 1 or any relevant regulator⁵ informs the Auditor General that, in the regulator's opinion, the authority may fail to comply with the requirements of Part 1⁶. Such an inspection may relate to some or all of an authority's functions⁷. The Auditor General for Wales must notify a Welsh improvement authority if he decides to carry out such an inspection of the authority⁸. In carrying out an inspection, and deciding whether to do so, the Auditor General must have regard to any guidance issued by the Welsh Ministers⁹.

If the Welsh Ministers direct the Auditor General for Wales to carry out an inspection of compliance with the requirements of the Local Government (Wales) Measure 2009 Part 1 by a Welsh improvement authority, the Auditor General must comply with the direction¹⁰. The Auditor General for Wales must notify a Welsh improvement authority if the Welsh Ministers have directed the Auditor General to carry out such an inspection of the authority¹¹. In carrying out an inspection the Auditor General must have regard to any guidance issued by the Welsh Ministers¹².

The Auditor General for Wales must prescribe scales of fees in respect of special inspections¹³.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the Auditor General for Wales see PARA 796 et seq.

3 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 I.e the Local Government (Wales) Measure 2009 ss 1-36.

5 For the purposes of the Local Government (Wales) Measure 2009 Pt 1, a 'relevant regulator' and the regulator's 'relevant functions' are those specified in respect of the person as follows:

63 (1) Her Majesty's Chief Inspector of Education and Training in Wales in the exercise of functions under the Education Act 1997 s 38 (inspection of LEAs: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1350) (Local Government (Wales) Measure 2009 s 16(1), (2)(a));

64 (2) the Welsh Ministers in the exercise of their functions under the Health and Social Care (Community Health and Standards) Act 2003 ss 93-95 (reviews etc of the provision of social services: see **SOCIAL SERVICES AND COMMUNITY CARE**) and regulations made under s 96 (Local Government (Wales) Measure 2009 s 16(1), (2)(b));

65 (3) a person appointed under the Fire and Rescue Services Act 2004 s 28 (inspectors: see **FIRE SERVICES**) in the exercise of the person's functions under s 28(1) (Local Government (Wales) Measure 2009 s 16(1), (2)(c));

66 (4) the Welsh Language Board in the exercise of functions under the Welsh Language Act 1993 s 17 (investigations) (Local Government (Wales) Measure 2009 s 16(1), (2)(d));

67 (5) an auditor appointed under the Public Audit (Wales) Act 2004 s 13 (see PARA 801) to audit the accounts of a Welsh improvement authority in the exercise of the function of carrying out the audit (Local Government (Wales) Measure 2009 s 16(1), (2)(e)).

The Welsh Ministers may by order amend or omit any of heads (1)-(5) above; add additional headings to the above; amend or omit such additional headings: see s 16(3). Such an order may make such amendments of the Local Government (Wales) Measure 2009 as appear to the Welsh Ministers to be necessary or expedient in connection with the provision made under s 16(3): s 16(4). The Welsh Ministers must not make such an order

unless they have consulted: (a) persons appearing to them to represent Welsh improvement authorities; (b) the Auditor General for Wales; (c) where the order alters the relevant functions specified in respect of a relevant regulator, that regulator; (d) where the order adds a person to the list of relevant regulators, that person: s 16(5). But s 16(5)(d) does not require the Welsh Ministers to have consulted a person established by or under any enactment if the enactment is not in force at the date on which the order is made: s 16(6).

6 Local Government (Wales) Measure 2009 s 21(1). But the Auditor General must, before deciding whether to carry out an inspection consult the Welsh Ministers and, in a case where the Auditor General has stated in a report under s 19(1)(h) (see PARA 721) that the Auditor General is minded to carry out a special inspection, consider any statement made by the authority in response in accordance with s 20(3) (see PARA 721): s 21(2). For the purposes of Part 1, an inspection under s 21 is referred to as a special inspection: s 21(10).

7 Local Government (Wales) Measure 2009 s 21(3). For the purposes of Pt 1, unless the context otherwise requires, a reference to the exercise of a function by a Welsh improvement authority includes a reference to the carrying out of connected acts (such as the making of administrative arrangements): s 35(2). In s 21 a reference to an authority's functions includes a reference to arrangements made to facilitate or support the exercise of its functions: s 21(11).

8 Local Government (Wales) Measure 2009 s 21(7)(a). The notification must specify the functions to which the inspection relates: s 21(8).

9 Local Government (Wales) Measure 2009 s 21(9). As to the Welsh Ministers see PARA 97. As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

10 Local Government (Wales) Measure 2009 s 21(4). A direction under s 21(4) may relate to some or all of an authority's functions: s 21(5). Before giving a direction under s 21(4), the Welsh Ministers must consult the Auditor General: s 21(6).

11 Local Government (Wales) Measure 2009 s 21(7)(b). The notification must specify the functions to which the inspection relates: s 21(8).

12 Local Government (Wales) Measure 2009 s 21(9).

13 Local Government (Wales) Measure 2009 s 27(1)(c). Different scales may be prescribed in respect of the different activities described in s 28(1), different types of the same activity and different types of Welsh improvement authority: s 27(2). An authority audited, assessed or inspected as mentioned in s 27(1) must, subject to s 27(4), pay to the Auditor General for Wales the fee payable under the appropriate scale: s 27(3). If it appears to the Auditor General that the work involved in a particular audit, assessment or inspection was substantially more or less than that envisaged by the appropriate scale, the Auditor General for Wales may charge a fee which is larger or smaller than that referred to in s 27(3): s 27(4). Before prescribing a scale of fees under this section the Auditor General must consult the Welsh Ministers and persons appearing to the Auditor General to represent authorities which may be audited, assessed or inspected as mentioned in s 27(1): s 27(5). The Public Audit (Wales) Act 2004 has effect in relation to a scale or scales of fees prescribed by the Auditor General under the Local Government (Wales) Measure 2009 s 27 as it has effect in relation to a scale or scales prescribed under the Public Audit (Wales) Act 2004 s 20(1) subject to modifications: see s 27(6).

UPDATE

722 Special inspections

NOTES 1-5--Local Government (Wales) Measure 2009 s 16 in force 17 July 2009: SI 2009/1796.

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723. Reports of special inspections.

As from a day to be appointed the following provisions have effect¹. Where the Auditor General for Wales² has carried out a special inspection³ he must issue a report⁴. A report must mention any matter in respect of which the Auditor General believes as a result of the inspection that the authority is failing, or may fail, to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1⁵ and may, if it mentions such a matter, make certain recommendations⁶. If a report makes such a recommendation, the Auditor General must, as soon as reasonably practicable arrange for the recommendation to be published⁷.

The Auditor General must send a copy of a report to the authority concerned and the Welsh Ministers and may publish a report and any information in respect of a report⁸.

If a report states that the Auditor General believes as a result of an inspection that a Welsh improvement authority is failing to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1 the next improvement plan⁹ prepared by the authority must record that fact and any action taken, or to be taken, by the authority as a result of the report¹⁰.

If a report relates to any extent to the administration of housing benefit or council tax benefit and the Auditor General thinks fit to do so, the Auditor General must as soon as reasonably practicable send a copy of the report to the Secretary of State¹¹.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the Auditor General for Wales see PARA 796 et seq.

3 As to the meaning of 'special inspection' see PARA 722.

4 Local Government (Wales) Measure 2009 s 22(1).

5 Ie the Local Government (Wales) Measure 2009 ss 1-36.

6 Local Government (Wales) Measure 2009 s 22(2). The recommendations mentioned in the text are that the Welsh Ministers do either or both of the following: (1) provide assistance to the authority by exercising their power under s 28 (see PARA 728); (2) give a direction under s 29 (see PARA 729): s 22(2).

7 Local Government (Wales) Measure 2009 s 22(3)(b).

8 Local Government (Wales) Measure 2009 s 22(3)(a), (c).

9 As to the meaning of 'improvement plan' see PARA 718.

10 Local Government (Wales) Measure 2009 s 22(4).

11 Local Government (Wales) Measure 2009 s 22(5). As to the Secretary of State see PARA 96.

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724. Co-ordination of audit.

As from a day to be appointed the following provisions have effect¹. The relevant regulators² and the Auditor General for Wales³ must have regard to the need for co-ordination in the exercise of regulatory functions⁴. In relation to each financial year⁵, the Auditor General for Wales must, after consulting the relevant regulators⁶, produce a timetable for each Welsh improvement authority⁷ which sets out the Auditor General's opinion as to the dates or times in that year at or during which the relevant regulators should exercise their relevant functions in

relation to the authority and the Auditor General should exercise particular functions⁹ in relation to the authority⁹. This duty may be discharged by the production of a timetable which relates to more than one financial year¹⁰.

In relation to a Welsh improvement authority, the relevant regulators in exercising their relevant functions and the Auditor General for Wales in exercising particular functions¹¹ must take all reasonable steps to adhere to the timetable produced in respect of the authority¹².

The Auditor General for Wales must assist the relevant regulators to comply with their duties under these provisions¹³.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'relevant regulators' see PARA 722 note 5.

3 As to the Auditor General for Wales see PARA 796 et seq.

4 Local Government (Wales) Measure 2009 s 23(1). 'Regulatory functions' means the relevant functions of the relevant regulators and the functions of the Auditor General for Wales under s 23(7): s 23(2). Those functions are the Auditor General's functions under the Public Audit (Wales) Act 2004 ss 13, 41 (see PARAS 801, 823) and the Local Government (Wales) Measure 2009 ss 17-19: s 23(7).

5 As to the meaning of 'financial year' see PARA 712 note 2.

6 As to the meanings of 'relevant functions' see PARA 722 note 5.

7 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

8 Ie the functions referred to in the Local Government (Wales) Measure 2009 s 23(7) (see note 4).

9 Local Government (Wales) Measure 2009 s 23(3).

10 Local Government (Wales) Measure 2009 s 23(4).

11 Ie the functions referred to in the Local Government (Wales) Measure 2009 s 23(7) (see note 4).

12 Local Government (Wales) Measure 2009 s 23(5).

13 Local Government (Wales) Measure 2009 s 23(6).

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725. Annual improvement reports.

As from a day to be appointed the following provisions have effect¹. In relation to each Welsh improvement authority², the Auditor General for Wales³ must produce a report (an 'annual improvement report') for each financial year⁴ which summarises or reproduces each audit and assessment report issued⁵ in respect of the authority during the financial year and any report of a special inspection of the authority issued⁶ during that financial year⁷.

The Auditor General for Wales must publish each Welsh improvement authority's annual improvement report⁸.

In the light of an authority's annual improvement report, the Auditor General for Wales must consider, in the light of an authority's annual improvement report, whether to: (1) make a recommendation to a relevant regulator as to how the regulator should exercise relevant functions⁹ in relation to the authority¹⁰; (2) make a recommendation to the Welsh Ministers¹¹ to provide assistance to the authority by exercising their power¹² to provide support¹³; (3) make a recommendation to the Welsh Ministers to give a direction¹⁴ to the authority¹⁵; (4) exercise any of the Auditor General's functions in relation to the authority¹⁶. The Auditor General must also make any such recommendation as is mentioned in heads (1) to (3) as he considers ought to be made¹⁷.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

3 As to the Auditor General for Wales see PARA 796 et seq.

4 As to the meaning of 'financial year' see PARA 712 note 2.

5 In each report issued in respect of the authority under the Local Government (Wales) Measure 2009 s 19 (see PARA 721).

6 In any report of a special inspection of the authority issued under the Local Government (Wales) Measure 2009 s 22 (see PARA 723).

7 Local Government (Wales) Measure 2009 s 24(1), (2).

8 Local Government (Wales) Measure 2009 s 24(3)(a).

9 As to the meanings of 'relevant regulator' and 'relevant functions' see PARA 722 note 5.

10 Local Government (Wales) Measure 2009 s 24(3)(b)(i).

11 As to the Welsh Ministers see PARA 97.

12 In their power under the Local Government (Wales) Measure 2009 s 28 (see PARA 728).

13 Local Government (Wales) Measure 2009 s 24(3)(b)(ii).

14 In a direction under the Local Government (Wales) Measure 2009 s 29 (see PARA 729).

15 Local Government (Wales) Measure 2009 s 24(3)(b)(iii).

16 Local Government (Wales) Measure 2009 s 24(3)(b)(iv).

17 Local Government (Wales) Measure 2009 s 24(3)(c).

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726. Statement of practice.

As from a day to be appointed the following provisions have effect¹. The Auditor General for Wales² must prepare a statement of practice which describes the way in which the Auditor General intends to exercise particular functions³. The Auditor General must keep the statement under review and if the Auditor General considers it appropriate following a review, prepare a revised statement of practice⁴.

The statement of practice must accord with the following principles⁵. The principles are:

- 702 (1) that the Auditor General for Wales should exercise the Auditor General's functions consistently as between different Welsh improvement authorities⁶;
- 703 (2) that auditors appointed to audit the accounts of local government bodies in Wales⁷ should discharge their responsibilities independently⁸;
- 704 (3) that it is desirable that the relevant functions of the relevant regulators and particular functions of the Auditor General⁹ are exercised proportionately so as not to impose an unreasonable burden upon Welsh improvement authorities¹⁰;
- 705 (4) that particular functions conferred on the Auditor General¹¹ should be exercised with a view to assisting Welsh improvement authorities to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1¹².

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the Auditor General for Wales see PARA 796 et seq.

3 Local Government (Wales) Measure 2009 s 25(1). The functions mentioned in the text are those conferred upon the Auditor General by s 17 (improvement information and planning: audit), s 18 (improvement assessments), s 19 (audit and assessment reports), s 23 (co-ordination of audit etc), s 24 (annual improvement reports): s 25(4). The Auditor General for Wales must send a copy of a statement or revised statement prepared under s 25(1) to the Welsh Ministers for their approval: s 25(6). If the statement or revised statement is approved by the Welsh Ministers, the Auditor General must publish the statement or the revised statement: s 25(7). The Auditor General for Wales must have regard to the statement most recently published under s 25(7) in exercising the functions described in s 25(4): s 25(8).

4 Local Government (Wales) Measure 2009 s 25(2).

5 Local Government (Wales) Measure 2009 s 25(3).

6 Local Government (Wales) Measure 2009 s 25(5)(a).

7 I.e. the persons appointed under the Public Audit (Wales) Act 2004 s 13 (see PARA 801).

8 Local Government (Wales) Measure 2009 s 25(5)(b).

9 I.e. the functions described in the Local Government (Wales) Measure 2009 s 23(7) (see PARA 724). As to the meanings of 'relevant regulators' and 'relevant functions' see PARA 722 note 5.

10 Local Government (Wales) Measure 2009 s 25(3). As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

11 I.e. the functions in the Local Government (Wales) Measure 2009 s 25(4).

12 Local Government (Wales) Measure 2009 s 25(5)(d).

UPDATE

726 Statement of practice

NOTES--Local Government (Wales) Measure 2009 s 25 in force 17 July 2009: SI 2009/1796.

PERFORMANCE/(iv) Wales/C. WELSH IMPROVEMENT AUTHORITIES/727. Inspectors' powers and duties.

727. Inspectors' powers and duties.

As from a day to be appointed the following provisions have effect¹. An inspector² has a right of access at all reasonable times to any premises of a Welsh improvement authority³ and to any document relating to the authority which appears to the inspector to be necessary for the purposes of the inspection, audit or assessment⁴. This right includes power to inspect, copy or take away the document⁵.

An inspector:

- 706 (1) may require a person holding or accountable for any such document to give the inspector such information or explanation as the inspector thinks necessary⁶; and
- 707 (2) may require that person to attend before the inspector in person to give the information or explanation or to produce the document⁷.

In relation to a document kept in electronic form, the power in head (2) above to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away⁸.

In connection with inspecting such a document, an inspector:

- 708 (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which the inspector considers is or has been used in connection with the document⁹;
- 709 (b) may require the person by whom or on whose behalf the computer is or has been used or a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the inspector such reasonable assistance as the inspector may require for that purpose¹⁰.

A Welsh improvement authority must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection or assessment¹¹.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 For these purposes 'inspector' means the Auditor General for Wales, a member of the Auditor General's staff or a person providing services to the Auditor General, who is carrying out an audit under the Local Government (Wales) Measure 2009 s 17 (see PARA 719), an assessment under s 18 (see PARA 720) or a special inspection (see PARA 722): s 26(11). As to the Auditor General for Wales see PARA 796 et seq.

3 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 Local Government (Wales) Measure 2009 s 26(1).

5 Local Government (Wales) Measure 2009 s 26(2).

6 Local Government (Wales) Measure 2009 s 26(3)(a).

7 Local Government (Wales) Measure 2009 s 26(3)(b).

8 Local Government (Wales) Measure 2009 s 26(4).

9 Local Government (Wales) Measure 2009 s 26(5)(a). An inspector must, unless in the opinion of the inspector the circumstances are exceptional, give three clear days' notice of any requirement under s 26 and, if so required, produce documentation which identifies the inspector as a person authorised to impose requirements under s 26: s 26(8). A person who without reasonable excuse obstructs the exercise of any power conferred by s 26 or fails to comply with a requirement of an inspector under s 26 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 26(9). Any expenses incurred by an inspector in proceedings for an offence under s 26(9) alleged to have been committed in relation to an inspection of a Welsh improvement authority are, so far as not recoverable from any other source, recoverable from the authority: s 26(10). As to the standard scale see PARA 105 note 7.

10 Local Government (Wales) Measure 2009 s 26(5)(b), (6).

11 Local Government (Wales) Measure 2009 s 26(7).

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728. Support by Welsh Ministers.

As from a day to be appointed the following provisions have effect¹. The Welsh Ministers may do anything which they consider is likely to assist a Welsh improvement authority² to comply with the requirements of the Local Government (Wales) Measure 2009 Part 1³. The Welsh Ministers must consider whether to exercise this power if a Welsh improvement authority asks them to do so⁴. If the power is not being exercised in response to such a request the Welsh Ministers must consult the Welsh improvement authority or authorities whom they propose to assist by the exercise of the power⁵, and those persons who appear to the Welsh Ministers to be key stakeholders affected by the exercise of the power⁶.

The above power includes power:

- 710 (1) to enter into arrangements or agreements with any person⁷;
- 711 (2) to co-operate with, or facilitate or co-ordinate the activities of, any person⁸;
- 712 (3) to exercise on behalf of any person any functions of that person⁹;
- 713 (4) to provide staff, goods, services or accommodation to any person¹⁰.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

3 See the Local Government (Wales) Measure 2009 s 28(1).

4 See the Local Government (Wales) Measure 2009 s 28(4).

5 See the Local Government (Wales) Measure 2009 s 28(3)(a).

6 See the Local Government (Wales) Measure 2009 s 28(3)(b).

7 Local Government (Wales) Measure 2009 s 28(2)(a).

8 Local Government (Wales) Measure 2009 s 28(2)(b).

9 Local Government (Wales) Measure 2009 s 28(2)(c).

10 Local Government (Wales) Measure 2009 s 28(2)(d).

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729. Powers of direction.

As from a day to be appointed the following provisions have effect¹. In certain cases the following provisions apply in relation to a Welsh improvement authority². The Welsh Ministers may direct the Welsh improvement authority to do all or any of the following:

- 714 (1) prepare or amend an improvement plan³ or to follow specified procedures in relation to such a plan⁴;
- 715 (2) carry out a review of its exercise of specified functions⁵;
- 716 (3) enter into specified collaboration arrangements with another Welsh improvement authority⁶;
- 717 (4) set specified improvement objectives⁷ for itself⁸.

The Welsh Ministers may direct⁹:

- 718 (a) a local inquiry to be held into the exercise of specified functions of the authority¹⁰;
- 719 (b) the authority to take any action which the Welsh Ministers consider necessary or expedient to secure its compliance with the requirements of the Local Government (Wales) Measure 2009 Part 1¹¹;
- 720 (c) that a specified function of the authority must be exercised by the Welsh Ministers or a person nominated by them for a period specified in the direction or for so long as the Welsh Ministers consider appropriate¹²; and
- 721 (d) that the authority must comply with any instructions of the Welsh Ministers or their nominee in relation to the exercise of that function and must provide such assistance as the Welsh Ministers or their nominee may require for the purpose of exercising the function¹³.

The Welsh Ministers may by regulations make provision which: (i) relates to an enactment which confers a function on them in respect of a function of a Welsh improvement authority¹⁴; and (ii) they consider necessary or expedient for the purposes of cases in which they make a direction under head (c) above¹⁵.

Where the above provisions do not apply¹⁶ the Welsh Ministers may direct the authority to enter into specified collaboration arrangements¹⁷.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 Local Government (Wales) Measure 2009 s 29(2), (3), (5), (6). As to the meaning of 'Welsh improvement authority' see PARA 711 note 2. The Local Government (Wales) Measure 2009 s 29 applies in relation to a Welsh improvement authority if the Welsh Ministers are satisfied as to any of the following:

68 (1) that:

1. (a) the authority has been the object of the exercise by the Welsh Ministers of their power under s 28 (see PARA 728) for the purpose of assisting the authority to comply with any of the requirements of Pt 1 (s 29(1)(a)); and
31

2. (b) the authority is failing, or is likely to fail, to comply with any of the requirements of Pt 1 and that failure, or likely failure, concerns a requirement mentioned in head (a) above (s 29(1)(b));
32

69 (2) that:

3. (a) the authority is failing, or is likely to fail, to comply with any of the requirements of Pt 1 (s 29(2)(a)); and
33

4. (b) the urgency of the situation or the potential consequences of the failure, or likely failure, are such that it is appropriate to exercise a power under s 29 despite the Welsh Ministers not having exercised their power under s 28 for the purpose of assisting the authority to comply with those requirements (s 29(2)(b)); or
34

70 (3) that:

5. (a) the authority is failing, or is likely to fail, to comply with any of the requirements of Pt 1 (s 29(3)(a));
35

6. (b) the Welsh Ministers have decided that they wish to exercise their power under s 28 for the purpose of assisting the authority to comply with those requirements (s 29(3)(b)); and
36

7. (c) the power under s 29 cannot be exercised effectively because the authority has failed to co-operate with the Welsh Ministers (s29(3)(c)).
37

If s 29 does not apply to a Welsh improvement authority see s 30; and the text to note 17.

3 As to the meaning of 'improvement plan' see PARA 718.

4 Local Government (Wales) Measure 2009 s 29(2)(a).

5 Local Government (Wales) Measure 2009 s 29(2)(b).

6 Local Government (Wales) Measure 2009 s 29(2)(c). 'Collaboration arrangements' means an activity performed in the exercise of a Welsh improvement authority's powers of collaboration: s 35(1).

7 As to improvement objectives see the Local Government (Wales) Measure 2009 s 3; and PARA 712.

8 Local Government (Wales) Measure 2009 s 30(2)(d).

9 A direction given under the Local Government (Wales) Measure 2009 s 29: (1) must be enforceable by mandatory order on the application of the Welsh Ministers; (2) may be published, in whole or in part, by the Welsh Ministers: s 29(9). Any direction given by the Welsh Ministers under the Local Government (Wales) Measure 2009 may be varied or revoked by a later direction and must be given in writing: s 49.

10 Local Government (Wales) Measure 2009 s 29(3). The provisions of the Local Government Act 1972 s 250(2)-(5) (inquiries: see PARA 105) apply in relation to an inquiry which the Welsh Ministers direct to be held under the Local Government (Wales) Measure 2009 s 29 as they apply in relation to an inquiry caused to be held under s 29: s 29(4).

11 Local Government (Wales) Measure 2009 s 29(5).

12 Local Government (Wales) Measure 2009 s 29(6)(a).

13 Local Government (Wales) Measure 2009 s 29(6)(b).

14 Local Government (Wales) Measure 2009 s 29(7)(a). Regulations under s 29(7) may, in relation to the cases mentioned in s 29(6)(b): (1) disapply or modify an enactment of the kind mentioned in s 29(7)(a); (2) have an effect similar to the effect of an enactment of that kind: s 29(8).

15 Local Government (Wales) Measure 2009 s 29(7)(b). See note 14.

16 le where the Local Government (Wales) Measure 2009 s 29 does not apply.

17 See the Local Government (Wales) Measure 2009 s 30(1), (2). A direction given under s 30 must be enforceable by mandatory order on the application of the Welsh Ministers: s 30(3).

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730. Power of Welsh Ministers to modify enactments and confer new powers.

As from a day to be appointed the following provisions have effect¹. If the Welsh Ministers think that an enactment² prevents or obstructs compliance by Welsh improvement authorities with the requirements of the Local Government (Wales) Measure 2009 Part 1³ they may by order⁴ make provision modifying or excluding the application of the enactment in relation to all Welsh improvement authorities, particular Welsh improvement authorities or particular descriptions of Welsh improvement authority⁵.

The Welsh Ministers may by order make provision conferring on all Welsh improvement authorities, particular Welsh improvement authorities or particular descriptions of Welsh improvement authority, any power which they consider necessary or expedient to permit or facilitate compliance with the requirements of the Local Government (Wales) Measure 2009 Part 1⁶.

Before the Welsh Ministers make an order under the above provisions they must consult such authorities or persons as appear to them to be representative of interests affected by their proposals⁷.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 For these purposes 'enactment' includes subordinate legislation (within the meaning of the Interpretation Act 1978 s 21): Local Government (Wales) Measure 2009 s 31(5).

3 le the Local Government (Wales) Measure 2009 ss 1-36. As to the meaning of 'Welsh improvement authority' see PARA 711 note 2.

4 An order under the Local Government (Wales) Measure 2009 may: (1) impose conditions on the exercise of any power conferred by the order (including conditions about consultation or approval); (2) amend an enactment: s 31(3). At the date at which this volume states the law no orders had been made under s 32.

5 Local Government (Wales) Measure 2009 s 31(1).

6 Local Government (Wales) Measure 2009 s 31(2). In exercising a power conferred under s 31(2) a Welsh improvement authority must have regard to any guidance issued by the Welsh Ministers: s 31(4). As to guidance issued by the Welsh Ministers see s 48; and PARA 711 note 3.

7 Local Government (Wales) Measure 2009 s 32(1).

UPDATE

730 Power of Welsh Ministers to modify enactments and confer new powers

NOTES--Local Government (Wales) Measure 2009 ss 31, 32 in force 17 July 2009: SI 2009/1796.

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731. Use of information.

As from a day to be appointed the following provisions have effect¹. A member of the information sharing group² may, for the purpose of the exercise of its relevant functions³, request that another member of the group provide it with specified information or documents⁴. A member of the information sharing group must comply with such a request in so far as the request relates to information obtained by, or documents produced to, that member in the course of the exercise of its relevant functions and it is reasonably practicable to do so⁵.

A relevant regulator may use any information the regulator obtains, or documents produced to the regulator, in the course of exercising any relevant function for the purposes of the regulator's functions under the Local Government (Wales) Measure 2009⁶.

1 The Local Government (Wales) Measure 2009 Pt 1 is brought into force by order made by the Welsh Ministers under s 53(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Welsh Ministers see PARA 97.

2 The 'information sharing group' means the relevant regulators and the Auditor General for Wales: Local Government (Wales) Measure 2009 s 33(1). As to the Auditor General for Wales see PARA 796 et seq. As to the meaning of 'relevant regulators' see PARA 722 note 5.

3 The relevant functions of a member of the information sharing group are, in the case of a relevant regulator, its relevant functions under the Local Government (Wales) Measure 2009 s 16 (see PARA 722) and, in the case of the Auditor General for Wales, the functions mentioned in s 23(7) (see PARA 724): s 33(4).

4 Local Government (Wales) Measure 2009 s 33(2).

5 Local Government (Wales) Measure 2009 s 33(3).

6 Local Government (Wales) Measure 2009 s 34.

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(3) LOCAL BETTER REGULATION OFFICE

732. Establishment.

The Local Better Regulation Office ('LBRO')¹ is established as a body corporate². It is to consist of ordinary and ex officio members³. There are to be at least five, and no more than ten, ordinary members⁴, one of whom is to be the chair of LBRO⁵. LBRO is to have a chief executive⁶ and the ex officio members are to be the chief executive⁷ and such other employees of LBRO as may for the time being be appointed by the chair after consulting the Chief Executive⁸. LBRO may appoint other employees, subject to the approval of the Secretary of State as to numbers and terms and conditions of employment⁹.

1 LBRO is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and the property of LBRO is not to be regarded as the property of, or property held on behalf of, the Crown: Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 1. LBRO is a public authority for the purposes of the Freedom of Information Act 2000 (see Sch 1, Pt 6 (as amended by the Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 19)) and is subject to investigation by the Parliamentary Commissioner (see the Parliamentary Commissioner Act 1967 Sch 2 (as amended by the Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 18)).

2 Regulatory Enforcement and Sanctions Act 2008 s 1(1), (2). The company limited by guarantee with registered number 6237580 and the company name Local Better Regulation Office (the 'LBRO company') is dissolved and the registrar of companies for England and Wales must strike the name of the LBRO company off the register of companies before 7 October 2008: s 2(1), (2). For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 (see **EMPLOYMENT**):

- 71 (1) the functions conferred on LBRO by the Regulatory Enforcement and Sanctions Act 2008 are to be treated as transferred to LBRO from the LBRO company on 1 October 2008 (ie the day on which s 2 came into force) (Sch 2 para 1(1)(a), (2));
- 72 (2) that transfer of functions is to be treated as a transfer of an undertaking to which the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 apply (Regulatory Enforcement and Sanctions Act 2008 Sch 2 para 1(1)(b), (2));
- 73 (3) each person who was, immediately before 1 October 2008 (ie the day on which s 2 came into force), employed by the LBRO company under a contract of employment is to be treated as employed in the undertaking immediately before that day (Sch 2 para 1(1)(c), (2)).

All the property, rights and liabilities to which the LBRO company was entitled or subject immediately before 1 October 2008 (ie the day on which s 2 came into force) became on that day the property, rights and liabilities of LBRO: Sch 2 para 2(1). This does not include rights and liabilities under or in connection with a contract of employment which are transferred pursuant to Sch 2 para 1: Sch 2 para 2(2). Schedule 2 para 2(1) operates in relation to property, rights and liabilities:

- 74 (a) whether or not they would otherwise be capable of being transferred (Sch 2 para 2(3)(a));
- 75 (b) without any instrument or other formality being required (Sch 2 para 2(3)(b));
- 76 (c) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer (Sch 2 para 2(3)(c)).

For the purposes of any enactment about income tax or corporation tax, LBRO and the LBRO company are to be treated as the same person and, in particular, the transfers effected by Sch 2 paras 1, 2 are to be disregarded for those purposes: Sch 2 para 3(1), (2). Accordingly, those transfers are not to be regarded for the purposes of the Finance Act 2002 Sch 29 (see **LICENSING AND GAMBLING** vol 67 (2008) PARAS 263, 295) (gains and losses from intangible fixed assets) as involving any realisation of an asset by the LBRO company or acquisition of an asset by LBRO: Regulatory Enforcement and Sanctions Act 2008 Sch 2 para 3(3). No transfer effected by Sch 2 para 2 is to give rise to any liability to stamp duty land tax: Sch 2 para 3(4).

Anything done by or in relation to the LBRO company which has effect immediately before 1 October 2008 (ie the day on which s 2 came into force) is, so far as is necessary for continuing its effect on or after that day, to have effect as if done by or in relation to LBRO: Sch 2 para 4(1). If before 1 October 2008 (ie the day on which s 2 came into force) any consultation was undertaken by the LBRO company which, had it been undertaken by LBRO on or after that day, would to any extent have satisfied any consultation requirement to which LBRO is subject, that requirement may to that extent be taken to have been satisfied: Sch 2 para 4(2).

Anything (including legal proceedings) which, immediately before 1 October 2008 (ie the day on which s 2 came into force), is in the process of being done by or in relation to the LBRO company may be continued by or in relation to LBRO: Sch 2 para 5. So far as is necessary or appropriate in consequence of Sch 2 para 2, on and after 1 October 2008 (ie the day on which s 2 came into force), a reference to the LBRO company in an enactment, instrument or other document is to be treated as a reference to LBRO: Sch 2 para 6.

3 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 2. The chair and other ordinary members are to be appointed by the Secretary of State after consulting the Welsh Ministers: Sch 1 para 3(3). The Secretary of State must consult the chair before appointing the other ordinary members: Sch 1 para 3(4). As to the Secretary of State and the Welsh Ministers see PARAS 96-97. The members of the LBRO are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 Sch 1, Pt II

(amended by the Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 17); and **PARLIAMENT** vol 78 (2010) PARA 908.

4 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 3(1). LBRO is to pay to or in respect of the ordinary members such sums as the Secretary of State may determine by way of or in respect of remuneration, allowances, expenses, pensions or gratuities: Sch 1 para 3(5). If the Secretary of State thinks that there are special circumstances that make it right for a person ceasing to be an ordinary member of LBRO to receive compensation, LBRO must pay to that person such compensation as the Secretary of State may determine: Sch 1 para 3(6). Service as a member of LBRO is not service in the civil service of the State: Sch 1 para 5. Subject to the other provisions of Sch 1, a person holds and vacates office as a member of LBRO in accordance with the terms and conditions of his appointment: Sch 1 para 6(1). A person may not be appointed as an ordinary member of LBRO for a term of more than five years: Sch 1 para 6(2). A person may at any time resign as an ordinary member of LBRO by giving notice in writing to the Secretary of State: Sch 1 para 6(3). The Secretary of State may remove a person as an ordinary member of LBRO at any time if the ordinary member has, at any time, been convicted of a criminal offence or, in the opinion of the Secretary of State, the ordinary member has failed to comply with the terms of his appointment or the ordinary member is otherwise unable, unfit or unwilling to perform his functions: Sch 1 para 6(4). A person who has ceased to be an ordinary member is eligible for reappointment for a further term or terms but the total period of appointment of an ordinary member (whether or not in consecutive terms) may not exceed ten years: Sch 1 para 6(5).

5 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 3(2).

6 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 7(1). The Chief Executive is to be an employee of LBRO: Sch 1 para 7(2). The first Chief Executive is to be appointed by the Secretary of State and a Chief Executive after the first is to be appointed by LBRO with the approval of the Secretary of State: Sch 1 para 7(3), (4). The Chief Executive may not take part in the determination of the amount of any remuneration, allowance, pension, gratuity or compensation payable to him: Sch 1 para 7(8).

7 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 4(1)(a).

8 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 4(1)(b). The number of ex officio members appointed under Sch 1 para 4(1)(b) may not at any time exceed such number as may for the time being be specified by the Secretary of State or half the number of ordinary members: Sch 1 para 4(2).

9 Regulatory Enforcement and Sanctions Act 2008 Sch 1 para 7(5). Service as an employee of LBRO is not service in the civil service of the State: Sch 1 para 7(6). LBRO may pay to or in respect of an employee sums by way of or in respect of remuneration, allowances, expenses, pensions, gratuities or compensation for loss of employment, subject to any conditions imposed by the Secretary of State under Sch 1 para 7(5): Sch 1 para 7(7).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(3) LOCAL BETTER REGULATION OFFICE/733. Objective and duties relating to functions of the Local Better Regulation Office.

733. Objective and duties relating to functions of the Local Better Regulation Office.

In exercising certain functions¹ the Local Better Regulation Office ('LBRO') has the objective of securing that local authorities² in England and Wales exercise their relevant functions³ effectively, in a way which does not give rise to unnecessary burdens and in a way which conforms with the principles⁴ that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and that regulatory activities should be targeted only at cases in which action is needed⁵.

LBRO must secure that in exercising any of its functions it does not impose burdens which are unnecessary or maintain burdens which have become unnecessary⁶. However this does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impracticable or disproportionate⁷.

LBRO must secure that:

- 722 (1) it exercises its functions in a way which is transparent, accountable,
proportionate and consistent⁸;
- 723 (2) it targets its activities only at cases in which action is needed⁹.

1 le the functions under the Regulatory Enforcement and Sanctions Act 2008 ss 6-10 (see PARAS 734-737).

2 As to the meaning of 'local authority' see PARA 23.

3 For the purposes of the Regulatory Enforcement and Sanctions Act 2008 Pt 1 (ss 1-21) 'relevant function', in relation to a local authority in England or Wales, means a function under a relevant enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity or a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of a relevant enactment relate to any activity: s 4(1). For this purpose 'relevant enactment' means: (1) an enactment specified in Sch 3 or an enactment made under such an enactment (s 4(2)(a)); (2) any enactment made under the European Communities Act 1972 s 2(2) with respect to any of the following matters (a) agricultural produce (quality standards and labelling); (b) animal health and welfare; (c) animal feed; (d) consumer protection; (e) environmental protection; (f) food hygiene and standards; (g) public health and safety; (h) weights and measures (including measuring instruments) (Regulatory Enforcement and Sanctions Act 2008 s 4(2)(b), (3)). The Secretary of State may by order amend Sch 3 so as to add any enactment to it or to remove any enactment from it; and amend s 4(3) so as to add any matter to it or remove any matter from it: s 4(4). An order under s 4(4) may make different provision for different purposes (including different provision in relation to local authorities in England and Wales respectively) but requires the consent of the Welsh Ministers to make provision, in relation to local authorities in Wales, in respect of a Welsh ministerial matter: s 4(5), (6). The Secretary of State may by order determine whether, for the purposes of s 4(3), an enactment made under the European Communities Act 1972 s 2(2) is made with respect to any of the matters specified in that subsection: Regulatory Enforcement and Sanctions Act 2008 s 4(7). An order under s 4(7) requires the consent of the Welsh Ministers where the determination affects the application of Pt 1 in relation to local authorities in Wales and the enactment made under the European Communities Act 1972 s 2(2) relates to a Welsh ministerial matter: Regulatory Enforcement and Sanctions Act 2008 s 4(8). In s 4(1) references to a function do not include a function of conducting criminal or civil proceedings; references to an activity include providing goods and services and employing or offering employment to any person: s 4(9). As to inspection plans where a relevant function consists of or includes a function of inspection see PARA 477.

4 Regulatory Enforcement and Sanctions Act 2008 s 5(1).

5 Regulatory Enforcement and Sanctions Act 2008 s 5(2). As to referrals to LBRO see PARAS 474-476.

6 Regulatory Enforcement and Sanctions Act 2008 s 13(1).

7 Regulatory Enforcement and Sanctions Act 2008 s 13(2).

8 Regulatory Enforcement and Sanctions Act 2008 s 13(3)(a).

9 Regulatory Enforcement and Sanctions Act 2008 s 13(3)(b).

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734. Guidance to local authorities.

The Local Better Regulation Office ('LBRO') has the function of giving guidance to local authorities¹ in England and Wales as to how to exercise their relevant functions². Such guidance:

- 724 (1) may be given to any one or more local authorities in England or Wales³;
- 725 (2) may relate to any one or more relevant functions⁴;
- 726 (3) may relate to the exercise of one or more relevant functions in a particular case⁵.

A local authority in England or Wales must have regard to any such guidance given to it⁶. Before giving guidance in relation to any relevant function LBRO must consult the persons whose activities are regulated by the exercise of the function, or persons representative of such persons, such local authorities in England and Wales, or such persons representative of local authorities in England and Wales as LBRO considers appropriate and such other persons as LBRO considers appropriate⁷. LBRO must publish (in such manner as it considers appropriate) any such guidance given by it⁸.

LBRO may at any time, if it thinks it appropriate to do so, direct one or more local authorities in England or Wales to comply with any guidance given under the above provisions which relates to the exercise of a relevant function or any guidance given under an enactment by another person which relates to the exercise of a relevant function⁹. Before giving a direction LBRO must consult the local authorities in England or Wales to whom the direction is to be given, any relevant regulator¹⁰ and such other persons as LBRO considers appropriate¹¹.

1 As to the meaning of 'local authority' see PARA 23.

2 Regulatory Enforcement and Sanctions Act 2008 s 6(1). As to the meaning of 'relevant functions' see PARA 733 note 3. As to the Secretary of State and the Welsh Ministers see PARAS 96-97. As to the power to provide guidance about the operation of the Regulatory Enforcement and Sanctions Act 2008 Pt 2 (ss 22-35) see PARA 478.

3 Regulatory Enforcement and Sanctions Act 2008 s 6(2)(a).

4 Regulatory Enforcement and Sanctions Act 2008 s 6(2)(b).

5 Regulatory Enforcement and Sanctions Act 2008 s 6(2)(c).

6 Regulatory Enforcement and Sanctions Act 2008 s 6(3).

7 Regulatory Enforcement and Sanctions Act 2008 s 6(4).

8 Regulatory Enforcement and Sanctions Act 2008 s 6(5). LBRO may vary or revoke any guidance given by it under s 6 by further guidance under s 6: s 6(6).

9 Regulatory Enforcement and Sanctions Act 2008 s 7(1). LBRO may not give a direction under s 7 without the consent of the Secretary of State or, in relation to a Welsh ministerial matter, without the consent of the Welsh Ministers: see s 7(2), (3). Where a direction relates to two or more local authorities such consent must be given by order: s 7(4).

10 For this purpose 'relevant regulator' means a person (other than a local authority in England or Wales) with regulatory functions which relate to the matter to which the direction relates: Regulatory Enforcement and Sanctions Act 2008 s 7(6).

11 Regulatory Enforcement and Sanctions Act 2008 s 7(5). LBRO must publish (in such manner as it considers appropriate) any direction given by it under s 7: s 7(7). Any direction under s 7 may be revoked or varied by further direction under s 7: s 7(8).

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735. Financial support and assistance to local authorities.

The Local Better Regulation Office ('LBRO') may provide financial support and assistance:

- 727 (1) to a local authority¹ in England or Wales in relation to its exercise of its relevant functions²;
- 728 (2) to any other person for the purpose of assisting local authorities in England or Wales in the exercise of their relevant functions³.

1 As to the meaning of 'local authority' see PARA 23.

2 Regulatory Enforcement and Sanctions Act 2008 s 8(a). As to the meaning of 'relevant functions' see PARA 733 note 3.

3 Regulatory Enforcement and Sanctions Act 2008 s 8(b).

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736. Advice to Ministers of the Crown.

The Local Better Regulation Office ('LBRO') may at any time give advice or make proposals to a Minister of the Crown on:

- 729 (1) the way in which any one or more local authorities¹ in England or Wales exercise any of their relevant functions²;
- 730 (2) the effectiveness of legislation (or proposed legislation) relating to the exercise by local authorities in England or Wales of their relevant functions³;
- 731 (3) whether any other regulatory functions could appropriately be exercised by local authorities in England or Wales⁴;
- 732 (4) any other matter relating to the exercise by local authorities in England or Wales of their relevant functions⁵.

LBRO must give advice or make proposals to a Minister of the Crown on the matters referred to in heads (1) to (4) above if requested to do so by that Minister⁶.

1 As to the meaning of 'local authority' see PARA 23.

2 Regulatory Enforcement and Sanctions Act 2008 s 9(1)(a). As to the meaning of 'relevant functions' see PARA 733 note 3.

3 Regulatory Enforcement and Sanctions Act 2008 s 9(1)(b).

4 Regulatory Enforcement and Sanctions Act 2008 s 9(1)(c).

5 Regulatory Enforcement and Sanctions Act 2008 s 9(1)(d).

6 Regulatory Enforcement and Sanctions Act 2008 s 9(2).

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737. Advice to Welsh Ministers.

The Local Better Regulation Office ('LBRO') may at any time give advice or make proposals to the Welsh Ministers¹ on:

- 733 (1) the way in which any one or more local authorities² in Wales exercise any of their relevant functions in relation to any Welsh ministerial matter³;
- 734 (2) the effectiveness of legislation (or proposed legislation) relating to the exercise by local authorities in Wales of their relevant functions in relation to any such matter⁴;
- 735 (3) whether any other regulatory functions could appropriately be exercised by local authorities in Wales in relation to any such matter⁵;
- 736 (4) anything else relating to the exercise by local authorities in Wales of their relevant functions in relation to any such matter⁶.

LBRO must give advice or make proposals to the Welsh Ministers on the matters referred to in heads (1) to (4) above if requested to do so by the Welsh Ministers⁷.

1 As to the Welsh Ministers see PARA 97.

2 As to the meaning of 'local authority' see PARA 23.

3 Regulatory Enforcement and Sanctions Act 2008 s 10(1)(a). As to the meaning of 'relevant functions' see PARA 733 note 3.

4 Regulatory Enforcement and Sanctions Act 2008 s 10(1)(b).

5 Regulatory Enforcement and Sanctions Act 2008 s 10(1)(c).

6 Regulatory Enforcement and Sanctions Act 2008 s 10(1)(d).

7 Regulatory Enforcement and Sanctions Act 2008 s 10(2).

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738. Enforcement priorities.

The Local Better Regulation Office ('LBRO') must prepare and publish¹ a list specifying those matters to which a local authority² in England should give priority when allocating resources to its relevant functions³. It must also prepare and publish a list specifying those matters to which a local authority in Wales should give priority when allocating resources to its relevant functions⁴. A local authority in England or Wales must have regard to the appropriate list when allocating resources to its relevant functions⁵.

LBRO must review a list under the above provisions from time to time on its own initiative, if requested to do so by the Secretary of State, and, in the case of a list relating to Wales⁶, if requested to do so by the Welsh Ministers⁷. If following such a review LBRO decides to revise a list it must publish the revised list⁸.

1 Before publishing a list under the Regulatory Enforcement and Sanctions Act 2008 s 11(1) LBRO must consult such persons as it considers appropriate: s 11(3). LBRO must publish details of any representations made to it pursuant to s 11(3): s 11(4).

2 As to the meaning of 'local authority' see PARA 23.

3 Regulatory Enforcement and Sanctions Act 2008 s 11(1)(a). LBRO may not publish a list under s 11(1)(a) without the consent of the Secretary of State: s 11(5). As to the Secretary of State see PARA 96. As to the meaning of 'relevant functions' see PARA 733 note 3.

4 Regulatory Enforcement and Sanctions Act 2008 s 11(1)(b). LBRO may not publish a list under s 11(1)(b) without consulting the Secretary of State and without the consent of the Welsh Ministers: s 11(6). As to the Welsh Ministers see PARA 97.

5 Regulatory Enforcement and Sanctions Act 2008 s 11(2).

6 le a list under the Regulatory Enforcement and Sanctions Act 2008 s 11(1)(b).

7 Regulatory Enforcement and Sanctions Act 2008 s 11(7).

8 Regulatory Enforcement and Sanctions Act 2008 s 11(8). The provisions of s 11(2)-(7) have effect in relation to the revised list.

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739. Relationship with other regulators.

The Local Better Regulation Office ('LBRO') and certain regulators must enter into a memorandum of understanding with each other as to how they will work together in the exercise of their respective functions¹. The regulators are the Environment Agency², the Food Standards Agency³, the Gambling Commission⁴, the Health and Safety Executive⁵ and the Office of Fair Trading⁶.

1 Regulatory Enforcement and Sanctions Act 2008 s 12(1).

2 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

3 As to the Food Standards Agency see **FOOD** vol 18(2) (Reissue) PARA 225.

4 As to the Gambling Commission see **LICENSING AND GAMBLING** vol 67 (2008) PARA 4.

5 As to the Health and Safety Executive see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.

6 Regulatory Enforcement and Sanctions Act 2008 s 12(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

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740. Ancillary powers.

The Local Better Regulation Office ('LBRO') may do anything which it thinks necessary or expedient for the purpose of, or in connection with, the exercise of any of its functions¹. In particular, LBRO may:

737 (1) enter into agreements²;

738 (2) acquire or dispose of property³;

- 739 (3) borrow money⁴;
- 740 (4) invest money⁵.

- 1 Regulatory Enforcement and Sanctions Act 2008 s 14(1).
- 2 Regulatory Enforcement and Sanctions Act 2008 s 14(2)(a).
- 3 Regulatory Enforcement and Sanctions Act 2008 s 14(2)(b).
- 4 Regulatory Enforcement and Sanctions Act 2008 s 14(2)(c).
- 5 Regulatory Enforcement and Sanctions Act 2008 s 14(2)(d).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(3) LOCAL BETTER REGULATION OFFICE/741. Guidance or directions.

741. Guidance or directions.

The Secretary of State¹ may give the Local Better Regulation Office ('LBRO') guidance or directions as to the exercise of any of its functions² and the Welsh Ministers³ may give LBRO guidance or directions as to the exercise in relation to Wales of any of its functions relating to a Welsh ministerial matter⁴.

Before giving any such guidance or directions the Secretary of State and the Welsh Ministers must consult LBRO and such other persons as the Secretary of State or the Welsh Ministers consider likely to be affected by the guidance or directions, or persons representative of such persons⁵.

LBRO must have regard to any such guidance and comply with any such directions given⁶.

1 As to the Secretary of State see PARA 96.

2 Regulatory Enforcement and Sanctions Act 2008 s 15(1). The Secretary of State may not give LBRO directions under these provisions relating to the exercise of its functions under s 7 (see PARA 734) in relation to two or more local authorities in England and Wales: s 15(6). However the Secretary of State may by order require LBRO to exercise its functions under s 7 in relation to two or more local authorities in England and Wales in such manner as may be specified in the order: s 15(7). At the date at which this volume states the law no such order had been made.

3 As to the Welsh Ministers see PARA 97.

4 Regulatory Enforcement and Sanctions Act 2008 s 16(1). The Welsh Ministers may not give LBRO directions under these provisions relating to the exercise of its functions under s 7 (see PARA 734) in relation to two or more local authorities in Wales: s 16(6). However the Welsh Ministers may by order require LBRO to exercise its functions under s 7 in relation to two or more local authorities in Wales, so far as relating to a Welsh ministerial matter, in such manner as may be specified in the order: s 16(7). At the date at which this volume states the law no such order had been made.

5 Regulatory Enforcement and Sanctions Act 2008 ss 15(2), 16(2). The Secretary of State or the Welsh Ministers must publish (in such manner as he or they consider appropriate) any guidance or directions given under ss 15, 16: see ss 15(3), 16(3). The Secretary of State or the Welsh Ministers may vary or revoke any guidance or directions given under ss 15, 16 by further guidance or directions under those provisions: ss 15(5), 16(5).

6 Regulatory Enforcement and Sanctions Act 2008 ss 15(4), 16(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(3) LOCAL BETTER REGULATION OFFICE/742. Review of LBRO.

742. Review of LBRO.

The Secretary of State¹ must in accordance with the following provisions review the Local Better Regulation Office's ('LBRO') discharge of its functions².

The review must in particular consider whether LBRO is discharging its functions effectively and efficiently and the extent to which LBRO, in discharging its functions³, has attained its objective⁴ relating to general functions⁵. In conducting such a review the Secretary of State must consult the Welsh Ministers⁶ and such other persons as the Secretary of State considers appropriate⁷. The Secretary of State must publish the results of a review⁸.

1 As to the Secretary of State see PARA 96.

2 Regulatory Enforcement and Sanctions Act 2008 s 17(1). The review must take place as soon as practicable after the end of the period of three years beginning with 1 October 2008 (ie the day on which s 17 came into force): s 17(2). The Secretary of State must lay a copy of a review under this section before Parliament and the National Assembly for Wales: s 17(6).

3 Ie its functions under the Regulatory Enforcement and Sanctions Act 2008 ss 6-10 (see PARAS 734-737).

4 Ie the objective under the Regulatory Enforcement and Sanctions Act 2008 s 5 (see PARA 733).

5 Regulatory Enforcement and Sanctions Act 2008 s 17(3).

6 As to the Welsh Ministers see PARA 97.

7 Regulatory Enforcement and Sanctions Act 2008 s 17(4).

8 Regulatory Enforcement and Sanctions Act 2008 s 17(6).

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743. Power to dissolve LBRO.

The Secretary of State¹ may by order provide for the Local Better Regulation Office's ('LBRO') to be dissolved and make consequential, supplementary, incidental and transitional provision in relation to its dissolution².

Such an order may in particular:

- 741 (1) provide for the transfer of the property, rights and liabilities of LBRO to another person³;
- 742 (2) provide for the transfer of the functions of LBRO to another person⁴;
- 743 (3) provide that anything done by or in relation to LBRO is, so far as is necessary for continuing its effect, to have effect as if done by or in relation to another person⁵;
- 744 (4) provide for anything (which may include legal proceedings) which is in the process of being done by or in relation to LBRO when a transfer under the order takes effect to be continued by or in relation to another person⁶;

- 745 (5) provide for a reference to LBRO in an enactment, instrument or other document to be treated as a reference to another person⁷.

Before making an order the Secretary of State must consult the Welsh Ministers and such persons (or persons representative of such persons) as appear to the Secretary of State to be substantially affected by the dissolution of LBRO⁸.

1 As to the Secretary of State see PARA 96.

2 Regulatory Enforcement and Sanctions Act 2008 s 18(1). At the date at which this volume states the law no such order had been made. The provision which may be made by an order under s 18 may be made by repealing, revoking or amending an enactment (whenever passed or made): s 18(7).

3 Regulatory Enforcement and Sanctions Act 2008 s 18(2)(a). Provision under s 18(2)(a) may include provision for property, rights or liabilities to be transferred whether or not they would otherwise be capable of being transferred, without any instrument or other formality being required and despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer: s 18(3). Provision under s 18(2)(a) for the transfer of rights and liabilities relating to employees of LBRO must include provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, to apply in relation to the transfer: Regulatory Enforcement and Sanctions Act 2008 s 18(4). Provision under s 18(2)(a) or (b) may include provision establishing a body corporate to which property, rights and liabilities, or functions, are transferred: s 18(5). Where an order under s 18 makes provision under s 18(2)(a), the Treasury may by regulations make provision for varying the way in which a relevant tax has effect in relation to: (1) the property, rights or liabilities transferred; or (2) anything done for the purposes of, or in relation to, the transfer: s 19(1). The provision which may be made under heading (1) above includes in particular provision for:

- 77 (a) a tax provision not to apply, or to apply with modifications, in relation to the property, rights or liabilities transferred (s 19(2)(a));
- 78 (b) the property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision (s 19(2)(b));
- 79 (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to the property, rights or liabilities transferred (s 19(2)(c)).

The provision which may be made under heading (2) above includes in particular provision for:

- 80 (i) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer (s 19(3)(i));
- 81 (ii) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way (s 19(3)(ii));
- 82 (iii) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer (s 19(3)(iii)).

For these purposes 'relevant tax' means income tax, corporation tax, capital gains tax, stamp duty or stamp duty reserve tax and 'tax provision' means a provision of an enactment about a relevant tax: s 19(4).

4 Regulatory Enforcement and Sanctions Act 2008 s 18(2)(b).

5 Regulatory Enforcement and Sanctions Act 2008 s 18(2)(c).

6 Regulatory Enforcement and Sanctions Act 2008 s 18(2)(d).

7 Regulatory Enforcement and Sanctions Act 2008 s 18(2)(e).

8 Regulatory Enforcement and Sanctions Act 2008 s 18(6). As to the Welsh Ministers see PARA 97.

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(4) EXTERNAL AUDIT

(i) The Audit Commission

A. IN GENERAL

744. The Audit Commission.

There is a body known as the Audit Commission for Local Authorities and the National Health Service in England¹ which consists of not less than 15 nor more than 20 members² appointed by the Secretary of State³. The Secretary of State must appoint one of the members to be chairman and another to be deputy chairman⁴. An appointment under these provisions must be made after consultation with such organisations and other bodies as appear to the Secretary of State to be appropriate⁵.

The Commission is a body corporate⁶. It is not to be regarded as acting on behalf of the Crown and neither the Commission nor its members, officers or servants are to be regarded as Crown servants⁷.

In addition to its functions under the Audit Commission Act 1998, the Commission has functions under other Acts, particularly in relation to best value⁸.

1 Audit Commission Act 1998 s 1(1) (amended by the Local Government and Public Involvement in Health Act 2007 ss 146(2), 241, Sch 18, Pt 9). As to the National Health Service see **HEALTH SERVICES**.

2 As to the tenure of office of members of the Commission see PARA 746. As to the remuneration of members of the Commission see PARA 747. As to staff of the Commission see PARA 748. The Auditor General for Wales has responsibility for the financial and performance audit of the National Assembly for Wales, certain publicly funded bodies, health bodies, and local government bodies in Wales: see PARA 796 et seq. As to the Audit Commission's duty to co-operate with and provide information to the Auditor General for Wales see PARAS 754, 755.

3 Audit Commission Act 1998 s 1(2). As from 1 August 2009 s 1(2) is amended by the Local Government and Public Involvement in Health Act 2007 s 145(a) so as to require that the Commission consist of not less than ten nor more than 15 members appointed by the Secretary of State: s 1(2) (as so amended); and the Local Government and Public Involvement in Health Act 2007 (Commencement No 8) Order 2008, SI 2008/3110, art 5(a). As to the Secretary of State see PARA 96.

4 Audit Commission Act 1998 s 1(3).

5 Audit Commission Act 1998 s 1(4).

6 Audit Commission Act 1998 s 1(5), Sch 1 para 1.

7 Audit Commission Act 1998 Sch 1 para 2.

8 As to best value see PARA 688 et seq.

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745. Functions of Secretary of State in relation to the Audit Commission.

The Secretary of State¹ may give the Audit Commission² directions as to the discharge of its functions and the Commission must give effect to any such directions³. The Commission must provide the Secretary of State with such information relating to the discharge of its functions as he may require and for that purpose must permit any person authorised by him to inspect and make copies of any accounts or other documents of the Commission and must afford such explanation of them as that person or the Secretary of State may require⁴. No direction is to be given by the Secretary of State and no information is to be required by him under these provisions in respect of any particular body subject to audit⁵.

Before giving any direction under these provisions, the Secretary of State must consult:

- 746 (1) the Commission⁶;
- 747 (2) such associations of local authorities⁷ as appear to him to be concerned or, as the case may require, such organisations connected with the health service⁸ as appear to him to be appropriate⁹; and
- 748 (3) such bodies of accountants as appear to him to be appropriate¹⁰.

The Secretary of State must publish any direction given by him under these provisions¹¹.

1 As to the Secretary of State see PARA 96.

2 As to the establishment of the Audit Commission see PARA 744.

3 Audit Commission Act 1998 s 1(5), Sch 1 para 3(1). As to the power of the Secretary of State to make regulations relating to audit see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628.

4 Audit Commission Act 1998 Sch 1 para 3(2).

5 Audit Commission Act 1998 Sch 1 para 3(3). 'Body subject to audit' means a body whose accounts are required to be audited in accordance with the Audit Commission Act 1998: s 53(1). As to the bodies that are subject to audit see PARA 757.

6 Audit Commission Act 1998 Sch 1 para 3(4)(a).

7 As to the meaning of 'local authority' see PARA 23.

8 'Health service' has the same meaning as in the National Health Service Act 2006 (see **HEALTH SERVICES** vol 54 (2008) PARA 10): Audit Commission Act 1998 s 53(1) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 189).

9 Audit Commission Act 1998 Sch 1 para 3(4)(b).

10 Audit Commission Act 1998 Sch 1 para 3(4)(c).

11 Audit Commission Act 1998 Sch 1 para 3(5).

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746. Tenure of office of members.

Every member of the Audit Commission¹ holds and vacates his office in accordance with the terms of his appointment². Any member may resign by notice in writing to the Secretary of State³. The chairman or deputy chairman may resign his office as chairman or deputy chairman by notice in writing to the Secretary of State⁴.

The Secretary of State⁵ may remove a member from office if that member:

- 749 (1) has become bankrupt or made an arrangement with his creditors⁶;
- 750 (2) is incapacitated by physical or mental illness⁷;
- 751 (3) has been absent from meetings of the Commission for a period of six months otherwise than for a reason approved by the Secretary of State⁸; or
- 752 (4) is in the opinion of the Secretary of State otherwise unable or unfit to discharge the functions of a member⁹.

If the chairman or deputy chairman ceases to be a member he also ceases to be chairman or deputy chairman¹⁰.

1 As to the establishment of the Audit Commission see PARA 744.

2 Audit Commission Act 1998 s 1(5), Sch 1 para 4(1). A member of the Commission is disqualified from membership of the House of Commons: see Sch 1 para 6; and the House of Commons Disqualification Act 1975 s 1, Sch 1, Pt III. See further **PARLIAMENT** vol 78 (2010) PARA 905 et seq.

3 Audit Commission Act 1998 Sch 1 para 4(2). As to the Secretary of State see PARA 96.

4 Audit Commission Act 1998 Sch 1 para 4(3).

5 Functions under the Audit Commission Act 1998 Sch 1 para 4(4) are subject to constraint on ministerial exercise: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2; and PARA 97. However, see also PARA 796 et seq.

6 Audit Commission Act 1998 Sch 1 para 4(4)(a).

7 Audit Commission Act 1998 Sch 1 para 4(4)(b).

8 Audit Commission Act 1998 Sch 1 para 4(4)(c).

9 Audit Commission Act 1998 Sch 1 para 4(4)(d).

10 Audit Commission Act 1998 Sch 1 para 4(5).

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747. Remuneration of members.

The Audit Commission¹ must pay to each member such remuneration and allowances (if any) as the Secretary of State² may determine³. As regards any member in whose case the Secretary of State may so determine, the Commission must pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine⁴. Where a person ceases to be a member otherwise than on the expiration of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission must pay as compensation to that person such amount as the Secretary of State may determine⁵.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 As to the Secretary of State see PARA 96.
- 3 Audit Commission Act 1998 s 1(5), Sch 1 para 5(1).
- 4 Audit Commission Act 1998 Sch 1 para 5(2).
- 5 Audit Commission Act 1998 Sch 1 para 5(3).

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748. Staff.

The Audit Commission¹ must appoint a chief officer who is to be known as the Controller of Audit and his appointment requires the approval of the Secretary of State². The Commission must appoint such other officers and servants as it considers necessary for the discharge of its functions³.

The Commission's officers and servants (the 'employees') must be appointed at such remuneration and on such other terms and conditions as the Commission may determine⁴. The Commission may:

- 753 (1) pay such pensions, allowances or gratuities as it may determine to or in respect of any of its employees⁵;
- 754 (2) make such payments as it may determine towards the provision of pensions, allowances or gratuities to or in respect of any of its employees⁶; or
- 755 (3) provide and maintain such schemes as it may determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any of its employees⁷.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 Audit Commission Act 1998 s 1(5), Sch 1 para 7(1). As to the Secretary of State see PARA 96.
- 3 Audit Commission Act 1998 Sch 1 para 7(2).
- 4 Audit Commission Act 1998 Sch 1 para 7(3).
- 5 Audit Commission Act 1998 Sch 1 para 7(4)(a). The references in Sch 1 para 7(4) to pensions, allowances or gratuities to or in respect of any employees include references to pensions, allowances or gratuities by way of compensation to or in respect of employees who suffer loss of office or employment: Sch 1 para 7(5). If an employee becomes a member of the Commission and was by reference to his employment by the Commission a participant in a pension scheme maintained by the Commission for the benefit of any of its employees, the Commission may determine that his service as a member is to be treated for the purposes of the scheme as service as an employee of the Commission whether or not any benefits are payable to or in respect of him by virtue of Sch 1 para 7(5): Sch 1 para 7(6).
- 6 Audit Commission Act 1998 Sch 1 para 7(4)(b). See also note 5.
- 7 Audit Commission Act 1998 Sch 1 para 7(4)(c). See also note 5.

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749. Financial provisions.

It is the duty of the Audit Commission¹ so to manage its affairs that its income from fees and otherwise will, taking one year with another, be not less than its expenditure properly chargeable to its income and expenditure account².

The Commission may borrow:

- 756 (1) from the Secretary of State³; or
- 757 (2) temporarily (by way of overdraft or otherwise) and with his consent, from any other person⁴,

such sums as it may require for the purpose of meeting its obligations and discharging its functions⁵. The aggregate amount outstanding in respect of the principal of any sums borrowed by the Commission under these provisions may not exceed £4 million or such greater sum, not exceeding £20 million, as the Secretary of State may from time to time by order specify⁶.

The Secretary of State must prepare, in respect of each financial year⁷ and in such form as the Treasury may direct, an account of any sums issued to him⁸ or received by him⁹ and of the disposal by him of any sums so received¹⁰, and must send the account to the Comptroller and Auditor General¹¹ not later than the end of the month of June following the financial year to which it relates; and the Comptroller and Auditor General must examine, certify and report on the account¹².

Any consent, loan or determination by the Secretary of State under these provisions requires the approval of the Treasury¹³.

The Treasury may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sums which the Commission borrows from a person other than the Secretary of State¹⁴. Immediately after such a guarantee is given, the Treasury must lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, the Treasury must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal sum and in respect of interest on it is finally discharged¹⁵. Any sums required by the Treasury for fulfilling a guarantee under these provisions must be charged on and issued out of the Consolidated Fund¹⁶. If any sums are issued in fulfilment of a guarantee given under these provisions, the Commission must make to the Treasury, at such times and in such manner as the Treasury may from time to time direct, payments of such amounts as the Treasury so directs in or towards repayment of the sums so issued, and payments of interest, at such rates as the Treasury so directs, on what is outstanding for the time being in respect of sums so issued¹⁷.

1 As to the establishment of the Audit Commission see PARA 744.

2 Audit Commission Act 1998 s 1(5), Sch 1 para 8(1). Sch 1 para 8(1) applies separately with respect to:

83 (1) its functions under s 38 (see PARA 783) in relation to the discharge of housing benefit administration functions and council tax administration functions (Sch 1 para 8(2)(b));

- 84 (2) its functions under s 40, s 41 (see PARA 785) relating to registered social landlords (Sch 1 para 8(2)(c));
- 85 (3) its functions under s 41A (see PARA 786) relating to such landlords (Sch 1 para 8(2)(ca) (added by the Local Government Act 2003 s 109(3));
- 86 (4) its functions in relation to health service bodies (Audit Commission Act 1998 Sch 1 para 8(2)(f)); and
- 87 (5) its other functions (Sch 1 para 8(2)(g)).

The Secretary of State may make grants to the Commission in respect of expenditure incurred or to be incurred by the Commission in connection with the carrying-out of its functions under s 41A (see PARA 786): Sch 1 para 8A (added by the Local Government Act 2003 s 109(4); amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 37).

As from a day to be appointed the Commission's functions under heads (3) and (4), and the Secretary of State's power to make grants are repealed by the Housing Regeneration Act 2008 ss 277, 321(1), Sch 9 paras 20, 26(a), (b), Sch 16. At the date at which this volume states the law no such day had been appointed.

'Health service body' means an NHS body within the meaning of the National Health Service Act 2006 Sch 15 (see **HEALTH SERVICES** vol 54 (2008) PARA 518 et seq), other than a Special Health Authority (see **HEALTH SERVICES** vol 54 (2008) PARA 505 et seq) or NHS Direct National Health Service Trust (see **HEALTH SERVICES** vol 54 (2008) PARA 513 et seq); Audit Commission Act 1998 s 53(1) (definition substituted by the Health Act 2006 Sch 8 para 41; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 296; and SI 2008/817). As to social services see **SOCIAL SERVICES AND COMMUNITY CARE**. As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq. As to council tax see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq. As to registered social landlords see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq.

3 Audit Commission Act 1998 Sch 1 para 9(1)(a). As to the Secretary of State see PARA 96. The Secretary of State may lend to the Commission any sums which it has power to borrow under Sch 1 para 9(1)(a); and the Treasury may issue to the Secretary of State out of the National Loans Fund any sums necessary to enable him to make loans under Sch 1 para 9(1)(a): Sch 1 para 9(3). Loans made under Sch 1 para 9(3) must be repaid to the Secretary of State at such times and by such methods, and interest on the loans must be paid to him at such times and at such rates, as he may from time to time determine: Sch 1 para 9(4). All sums received by the Secretary of State under Sch 1 para 9(4) must be paid into the National Loans Fund: Sch 1 para 9(5). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 727-739.

4 Audit Commission Act 1998 Sch 1 para 9(1)(b).

5 Audit Commission Act 1998 Sch 1 para 9(1).

6 Audit Commission Act 1998 Sch 1 para 9(2). The Secretary of State has specified £12m as the sum that the borrowed amount (ie, the aggregate amount outstanding in respect of the principal of any sums borrowed by the Commission) may not exceed: Audit Commission (Borrowing Limit) Order 2002, SI 2002/743, art 2.

7 For these purposes, 'financial year' means the 12 months ending with 31 March in any year: Audit Commission Act 1998 Sch 1 para 11(5) (amended by the Local Government Act 2003 s 110(1)).

8 Ie under the Audit Commission Act 1998 Sch 1 para 9(3): see note 3.

9 Ie under the Audit Commission Act 1998 Sch 1 para 9(4): see note 3.

10 Audit Commission Act 1998 Sch 1 para 9(6)(a), (b).

11 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

12 See the Audit Commission Act 1998 Sch 1 para 9(6) (amended by the Local Government Act 2003 Sch 7 para 65(a)).

13 Audit Commission Act 1998 Sch 1 para 9(7).

14 Audit Commission Act 1998 Sch 1 para 10(1).

15 Audit Commission Act 1998 Sch 1 para 10(2).

16 Audit Commission Act 1998 Sch 1 para 10(3). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARA 1028 et seq.

17 Audit Commission Act 1998 Sch 1 para 10(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/750. Statement of account.

750. Statement of account.

The Audit Commission¹ must keep proper accounts and other records in relation to its accounts and must prepare in respect of each financial year² a statement of account in such form as the Secretary of State³ may, with the approval of the Treasury⁴, direct⁵. The statement of account prepared by the Commission in respect of each financial year must be submitted to the Secretary of State before such date as he may, with the approval of the Treasury, direct⁶. The Secretary of State must, on or before 30 June in each year, transmit to the Comptroller and Auditor General⁷ the statement of account prepared by the Commission for the financial year last ended⁸.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'financial year' see PARA 749 note 7.

3 As to the Secretary of State see PARA 96. Functions under the Audit Commission Act 1998 Sch 1 para 11(1) are subject to constraint on ministerial exercise: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2; and PARA 97. However, see also PARA 796 et seq.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Audit Commission Act 1998 s 1(5), Sch 1 para 11(1).

6 Audit Commission Act 1998 Sch 1 para 11(2).

7 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 Audit Commission Act 1998 Sch 1 para 11(3) (amended by the Local Government Act 2003 Sch 7 para 65(b)). The Comptroller and Auditor General must examine and certify the statement of account transmitted to him under Sch 1 para 11(3) and must lay before Parliament copies of the statement together with his report on it: Sch 1 para 11(4).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/751. Proceedings.

751. Proceedings.

The Audit Commission¹ must regulate its own proceedings². The validity of any proceedings of the Commission is not affected by any vacancy among its members or by any defect in the appointment of any of its members³.

The application of the seal of the Commission must be authenticated by the signature of the chairman or of some other member authorised either generally or specially by the Commission for that purpose⁴. Any document purporting to be a document duly executed under the seal of

the Commission must be received in evidence and must, unless the contrary is proved, be deemed to be so executed⁵.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 Audit Commission Act 1998 s 1(5), Sch 1 para 12(1).
- 3 Audit Commission Act 1998 Sch 1 para 12(2). As to the appointment of members of the Commission see PARA 744; and as to the tenure of office of members of the Commission see PARA 746.
- 4 Audit Commission Act 1998 Sch 1 para 13(1).
- 5 Audit Commission Act 1998 Sch 1 para 13(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/752. Annual report.

752. Annual report.

The Audit Commission¹ must publish an annual report on the discharge of its functions². Copies of each annual report must be sent by the Commission to the Secretary of State³ who must lay copies of it before each House of Parliament⁴.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 Audit Commission Act 1998 s 1(5), Sch 1 para 14(1).
- 3 As to the Secretary of State see PARA 96.
- 4 Audit Commission Act 1998 Sch 1 para 14(2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/753. Delegation.

753. Delegation.

The Audit Commission¹ may delegate any of its functions to: (1) a committee or sub-committee established by the Commission (including a committee or sub-committee including persons who are not members of the Commission)²; or (2) an officer or servant of the Commission³.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 Audit Commission Act 1998 Sch 1 para 11A(a) (Sch 1 para 11A added by the Local Government Act 2003 s 111).
- 2 Audit Commission Act 1998 Sch 1 para 11A(b) (as added: see note 2).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/754. Co-operation with the Auditor General for Wales.

754. Co-operation with the Auditor General for Wales.

The Audit Commission¹ must co-operate with the Auditor General for Wales² where it seems to it appropriate to do so for the efficient and effective discharge of its functions in relation to studies for improving economy in services and reports on the impact of statutory provisions³, or its functions in relation to certain bodies⁴.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the Auditor General for Wales see PARA 796 et seq.

3 Ie its functions under the Audit Commission Act 1998 ss 33, 34 (see PARAS 780, 781).

4 Audit Commission Act 1998 s 51A (added by the Public Audit (Wales) Act 2004 Sch 2 para 34). The bodies referred to are those mentioned in the Audit Commission Act 1998 Sch 2 para 1(g): see PARA 757. As to the Commission's duty to provide information to the Auditor General see PARA 755.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/755. Provision of information to the Auditor General for Wales.

755. Provision of information to the Auditor General for Wales.

The Audit Commission¹ must, on request, provide the Auditor General for Wales² with any information he may reasonably require for the purpose of making comparisons, in the discharge of his functions in relation to studies for improving economy in services and studies on the impact of statutory provisions³, between local government bodies in Wales⁴ and other local government bodies⁵.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the Auditor General for Wales see PARA 796 et seq.

3 Ie his functions under the Public Audit (Wales) Act 2004 ss 41, 42 (see PARAS 823, 824).

4 As to the meaning of 'local government bodies in Wales' see PARA 757 note 1.

5 Audit Commission Act 1998 s 51B (added by the Public Audit (Wales) Act 2004 Sch 2 para 34). 'Local government body' means a body mentioned in the Audit Commission Act 1998 Sch 2 para 1, other than one mentioned in Sch 2 para 1(g) (see PARA 757): s 53(1) (definition added by the Public Audit (Wales) Act 2004 Sch 2 para 36). As to the Commission's duty to co-operate with the Auditor General see PARA 754. As to the Auditor General for Wales's duty to provide information to the Commission see PARA 798.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(4) EXTERNAL AUDIT/(i) The Audit Commission/A. IN GENERAL/756. Interaction with other authorities.

756. Interaction with other authorities.

The Audit Commission¹ must from time to time, or at such times as the Secretary of State² may specify by order, prepare³: (1) a document setting out what Audit Commission inspections⁴ it proposes to carry out (an 'inspection programme')⁵; and (2) a document setting out the way in which it proposes to carry out its functions of inspecting and reporting so far as they relate to Audit Commission inspections (an 'inspection framework')⁶.

Before preparing an inspection programme or an inspection framework, the Commission must consult the Secretary of State, the inspection authorities⁷, and any other person or body specified by an order made by the Secretary of State⁸. It must also send to each of those persons or bodies a copy of each programme or framework once it is prepared⁹. The Secretary of State may by order specify the form that inspection programmes or inspection frameworks must take¹⁰.

If a specified inspector¹¹ is proposing to carry out an inspection that would involve inspecting a specified organisation¹², and the Commission considers that the proposed inspection would impose an unreasonable burden on the specified organisation, or would do so if carried out in a particular way¹³, the Commission must give a notice to the specified inspector requiring the inspector not to carry out the proposed inspection, or not to carry it out in that way¹⁴.

Where such a notice is given, the proposed inspection must not be carried out, or (as the case may be) must not be carried out in the way mentioned in the notice¹⁵. However, the Secretary of State, if satisfied that the proposed inspection would not impose an unreasonable burden on the specified organisation in question¹⁶, or would not do so if carried out in a particular way¹⁷, may give consent to the inspection being carried out, or being carried out in that way¹⁸.

The Commission must co-operate with the inspection authorities¹⁹, section 139A inspectors²⁰, and any other public authority²¹ specified by order made by the Secretary of State²², where it is appropriate to do so for the efficient and effective discharge of any of its relevant functions²³.

The Commission may act jointly with an inspection authority²⁴, and a section 139A inspector²⁵, where it is appropriate to do so for the efficient and effective discharge of any of its relevant functions²⁶.

The Commission may delegate any of its relevant functions (to such extent as it may determine) to an inspection authority²⁷, or any other public authority specified by an order made by the Secretary of State²⁸. If the carrying out of an Audit Commission inspection, or any relevant study²⁹ is so delegated it is nevertheless to be regarded for the purposes of any enactment as carried out by the Commission³⁰.

The Commission may, if it thinks it appropriate to do so, provide advice or assistance to another public authority³¹ for the purpose of the exercise by that authority of its functions³². Such advice or assistance may be provided on such terms, including terms as to payment, as the Commission thinks fit³³.

The Commission may make arrangements with an inspection authority to carry out, on behalf of that authority, inspections in England of any institution or matter which the Commission is not required or authorised to carry out by virtue of any other enactment³⁴.

1 As to the establishment of the Audit Commission see PARA 744 et seq.

2 As to the Secretary of State see PARA 96.

3 Audit Commission Act 1998 s 47B, Sch 2A para 4(1) (Sch 2A added by the Local Government and Public Involvement in Health Act 2007 s 149(1), (4), Sch 11).

4 'Audit Commission inspection' means an inspection under: (1) the Audit Commission Act 1998 s 41A (see PARA 786) (inspection of registered social landlords); or (2) the Local Government Act 1999 s 10 (see PARA 699) (inspection of best value authorities): Audit Commission Act 1998 Sch 2A para 3 (as added: see note 3). As from a day to be appointed Sch 2A para 3 is amended by the Housing and Regeneration Act 2008 ss 277, 321(1), Sch

9 paras 20, 27, Sch 16 to remove the reference to the Audit Commission Act 1998 s 41A. At the date at which this volume states the law no such day had been appointed.

5 Audit Commission Act 1998 Sch 2A para 4(1)(a) (as added: see note 3).

6 Audit Commission Act 1998 Sch 2A para 4(1)(b) (as added: see note 3).

7 In the Audit Commission Act 1998 Sch 2A 'inspection authority' means: (1) Her Majesty's Chief Inspector of Prisons; (2) Her Majesty's Chief Inspector of Constabulary; (3) Her Majesty's Chief Inspector of the Crown Prosecution Service; (4) Her Majesty's Chief Inspector of Probation for England and Wales; (5) Her Majesty's Chief Inspector of Court Administration; (6) Her Majesty's Chief Inspector of Education, Children's Services and Skills; (7) the Care Quality Commission: Sch 2A para 1(1) (as so added (see note 3); and amended by the Health and Social Care Act 2008 ss 95, 166, Sch 5, Pt 3, para 69, Sch 15, Pt 1; and SI 2008/172).

In the Audit Commission Act 1998 Sch 2A paras 5-10 (see notes 11-34), 'inspection authority' also includes: (a) Her Majesty's Inspectors of Constabulary; (b) Her Majesty's Inspectorate of Probation for England and Wales; and (c) Her Majesty's Inspectorate of Court Administration, but notice under Sch 2A para 5(1) in respect of an inspection by those inspectors or inspectorates may be given to their Chief Inspector: Sch 2A para 1(1) (as so added (see note 3); and amended by SI 2008/172).

8 Audit Commission Act 1998 Sch 2A para 4(2) (as added: see note 3). At the date at which this volume states the law no orders had been made under this provision. Schedule 2A para 4(2) does not require the Commission to consult, or to send copies of documents to, the inspection authorities or any other person or body specified by order in cases or circumstances in relation to which the Commission and that person or body have agreed to waive the requirement: see Sch 2A para 4(3).

9 Audit Commission Act 1998 Sch 2A para 4(2) (as added: see note 3). See also note 8.

10 Audit Commission Act 1998 Sch 2A para 4(4) (as added: see note 3).

11 Audit Commission Act 1998 Sch 2A para 5(1)(a) (as added: see note 3). For these purposes 'specified inspector' means: (1) an inspection authority; (2) a section 139A inspector; or (3) any other person or body specified by order made by the Secretary of State: Sch 2A para 5(2) (as so added). See also note 12.

12 For these purposes 'specified organisation' means a person or body specified by order made by the Secretary of State: Audit Commission Act 1998 Sch 2A para 5(3) (as added: see note 3). A person or body may be specified under Sch 2A para 5(3) in relation to particular functions: Sch 2A para 5(4) (as so added). As to the bodies which are specified organisations for these purposes see the Audit Commission for Local Authorities and the National Health Service in England (Specified Organisations) (England) Order 2009, SI 2009/1360, art 2.

In the case of a person or body so specified, the Audit Commission Act 1998 Sch 2A para 5(1)(a) (see the text and note 11) is to be read as referring to an inspection that would involve inspecting the discharge by that person or body of any of the functions in relation to which it is specified: Sch 2A para 5(5) (as so added).

13 Audit Commission Act 1998 Sch 2A para 5(1)(b) (as added: see note 3).

14 Audit Commission Act 1998 Sch 2A para 5(1) (as added: see note 3). However, the Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given under this paragraph: Sch 2A para 5(6) (as so added). As to cases specified for these purposes see the Audit Commission for Local Authorities and the National Health Service in England (Specified Organisations) (England) Order 2009, SI 2009/1360, art 3.

The Secretary of State may also by order make provision supplementing the Audit Commission Act 1998 Sch 2A para 5, including in particular provision: (1) about the form of notices; (2) prescribing the period within which notices are to be given; (3) prescribing circumstances in which notices are, or are not, to be made public; (4) for revising or withdrawing notices; (5) for setting aside notices not validly given: Sch 2A para 5(9) (as so added).

15 Audit Commission Act 1998 Sch 2A para 5(7) (as added: see note 3).

16 Audit Commission Act 1998 Sch 2A para 5(8)(a) (as added: see note 3).

17 Audit Commission Act 1998 Sch 2A para 5(8)(b) (as added: see note 3).

18 Audit Commission Act 1998 Sch 2A para 5(8) (as added: see note 3).

19 Audit Commission Act 1998 Sch 2A para 6(a) (as added: see note 3).

20 Audit Commission Act 1998 Sch 2A para 6(b) (as added: see note 3). 'Section 139A inspector' means a person authorised under the Social Security Administration Act 1992 s 139A (see **HOUSING** vol 22 (2006 Reissue)

PARA 171) to report on the administration of housing benefit and council tax benefit, other than the Commission: Audit Commission Act 1998 Sch 2A para 3 (as so added).

21 For these purposes 'public authority' includes any person any of whose functions are of a public nature; but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament: Audit Commission Act 1998 Sch 2A para 2(1) (as added: see note 3). Subject to Sch 2A para 9(3) (see note 31), references in this Schedule to a public authority do not include a public authority outside the United Kingdom: Sch 2A para 2(2). In relation to a particular act, a person is not a public authority by virtue of Sch 2A para 2(1) if the nature of the act is private: Sch 2A para 2(3). As to the meaning of 'United Kingdom' see PARA 116 note 18.

22 Audit Commission Act 1998 Sch 2A para 6(c) (as added: see note 3).

23 Audit Commission Act 1998 Sch 2A para 6 (as added: see note 3). 'Relevant functions' means: (1) inspection functions; (2) national studies functions; and (3) reporting functions: Sch 2A para 3 (as so added). 'Inspection functions' means functions relating to Audit Commission inspections: Sch 2A para 3 (as so added). 'National studies functions' means functions relating to studies under: (a) s 33(1) or (4) (see PARA 780); (b) s 34(1) (see PARA 781); (c) s 36(1) (see PARA 782); (d) s 38 (see PARA 783); (e) s 40 (see PARA 785): Sch 2A para 3 (as so added). 'Reporting functions' means functions relating to the production of reports by the Commission under: (i) the Social Security Administration Act 1992 s 139A (see **HOUSING** vol 22 (2006 Reissue) PARA 171); or (ii) the Audit Commission Act 1998 s 47A (see PARA 788): Sch 2A para 3 (as so added).

As from a day to be appointed the definition 'national studies functions' is amended by the Housing and Regeneration Act 2008 ss 277, 321(1), Sch 9 paras 20, 27, Sch 16 to remove head (e). At the date at which this volume states the law no such day had been appointed.

24 Audit Commission Act 1998 Sch 2A para 7(a) (as added: see note 3).

25 Audit Commission Act 1998 Sch 2A para 7(b) (as added: see note 3).

26 Audit Commission Act 1998 Sch 2A para 7 (as added: see note 3).

27 Audit Commission Act 1998 Sch 2A para 8(1)(a) (as added: see note 3).

28 Audit Commission Act 1998 Sch 2A para 8(1)(b) (as added: see note 3).

29 Ie any study referred to as a 'national studies function': see note 23.

30 Audit Commission Act 1998 Sch 2A para 8(2) (as added: see note 3).

31 This reference to another public authority includes a public authority outside the United Kingdom: Audit Commission Act 1998 Sch 2A para 9(3) (as added: see note 3).

32 Audit Commission Act 1998 Sch 2A para 9(1) (as added: see note 3).

33 Audit Commission Act 1998 Sch 2A para 9(2) (as added: see note 3).

34 Audit Commission Act 1998 Sch 2A para 10(1) (as added: see note 3). Inspections under Sch 2A para 10 may be carried out on such terms, including terms as to payment, as the Commission thinks fit: Sch 2A para 10(2) (as so added).

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B. ACCOUNTS AND AUDIT OF PUBLIC BODIES

(A) AUDIT OF ACCOUNTS

757. Required audit of accounts.

Audits are required under the Audit Commission Act 1998¹ of the accounts of:

- 758 (1) a local authority²;
- 759 (2) a joint authority³;
- 760 (3) the Greater London Authority⁴;
- 761 (4) a functional body⁵;
- 762 (5) the London Pensions Fund Authority⁶;
- 763 (6) the London Waste and Recycling Board⁷;
- 764 (7) a parish meeting of a parish not having a separate parish council⁸;
- 765 (8) a committee of a local authority, including a joint committee of two or more such authorities⁹;
- 766 (9) the Council of the Isles of Scilly¹⁰;
- 767 (10) charter trustees¹¹;
- 768 (11) a port health authority¹²;
- 769 (12) the Broads Authority¹³;
- 770 (13) a national park authority¹⁴;
- 771 (14) a conservation board¹⁵;
- 772 (15) a police authority established under the Police Act 1996¹⁶;
- 773 (16) a fire and rescue authority¹⁷;
- 774 (17) a joint waste authority¹⁸;
- 775 (18) a licensing planning committee¹⁹;
- 776 (19) an internal drainage board²⁰;
- 777 (20) a local probation board²¹;
- 778 (21) a probation trust (other than a Welsh probation trust)²².

The provisions of the Audit Commission Act 1998 also apply to:

- 779 (a) the accounts of the collection fund of the Common Council of the City of London²³ and the accounts of the City fund²⁴;
- 780 (b) the accounts relating to the superannuation fund maintained and administered by the Common Council of the City of London²⁵;
- 781 (c) the accounts of a passenger transport executive²⁶;
- 782 (d) annual accounts of health service bodies²⁷.

The above accounts must be made up each year to 31 March or such other date as the Secretary of State²⁸ may generally or in any special case direct²⁹, and must be audited in accordance with the Audit Commission Act 1998 by an auditor³⁰ or auditors appointed by the Audit Commission³¹.

1 le the Audit Commission Act 1998 s 2 applies: see the text and notes 28-31.

Section 2 does not apply to a local government body in Wales: Sch 2 para 1B (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 38(1), (3)). Nor does it apply to the accounts of a body specified in the National Health Service Act 1977 s 98(1)(za) or (bb)-(dd) (repealed) in its capacity as a trustee of a charitable trust: Audit Commission Act 1998 Sch 2 para 1C (added by SI 2005/1074; repealed except in relation to Welsh NHS bodies by the Health Act 2006 s 80(1), (2), Sch 8 paras 39, 42(1), (4), Sch 9). Likewise until a day to be appointed the Audit Commission Act 1998 s 2 does not apply to a Welsh NHS body: see Sch 2 para 1(g) (amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 38(2); and partly repealed by the Health Act 2006 Sch 8 para 42(2), Sch 9). 'Local government body in Wales' has the meaning given in the Public Audit (Wales) Act 2004 s 12(1) (see PARA 801): Audit Commission Act 1998 s 53(1) (definition added by the Public Audit (Wales) Act 2004 Sch 2 para 36). 'Welsh NHS body' has the meaning given in the Public Audit (Wales) Act 2004 s 60 (see PARA 799 note 2): Audit Commission Act 1998 s 53(1) (definition added by the Public Audit (Wales) Act 2004 Sch 2 para 36).

2 Audit Commission Act 1998 s 2, Sch 2 para 1(a). As to the meaning of 'local authority' see PARA 23.

3 Audit Commission Act 1998 Sch 2 para 1(b). As to the meaning of 'joint authority' see PARA 47 note 1; definition applied by s 53(2).

4 Audit Commission Act 1998 Sch 2 para 1(bb) (added by the Greater London Authority Act 1999 s 133(1)). Any functions conferred or imposed on the Greater London Authority under or by virtue of the Audit Commission Act 1998 are to be functions which are exercisable by the Mayor of London acting on behalf of the Authority: s 53(5) (added by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 12(1), (3)). However, the Audit Commission Act 1998 s 53(5) (as so added) does not apply in relation to any function expressly conferred on the London Assembly: s 53(6) (added by the Greater London Authority Act 1999 Sch 8 paras 1, 12(1), (3)). As to the Greater London Authority, the Mayor of London and the London Assembly see **LONDON GOVERNMENT**.

5 Audit Commission Act 1998 Sch 2 para 1(bc) (added by the Greater London Authority Act 1999 s 133(1)). 'Functional body' means a functional body within the meaning of the Greater London Authority Act 1999 (see **LONDON GOVERNMENT**): Audit Commission Act 1998 s 53(1) (definition added by the Greater London Authority Act 1999 Sch 8 paras 1, 12(1), (2)).

6 Audit Commission Act 1998 Sch 2 para 1(bd) (added by the Greater London Authority Act 1999 s 133(1)). As to the London Pensions Fund Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 225 et seq.

7 Audit Commission Act 1998 Sch 2 para 1(be) (added by SI 2008/2038).

8 Audit Commission Act 1998 Sch 2 para 1(c). As to parish meetings see PARA 34.

9 Audit Commission Act 1998 Sch 2 para 1(d). As to committees see PARA 371 et seq; and as to joint committees see PARA 380.

10 Audit Commission Act 1998 Sch 2 para 1(e). As to the Council of the Isles of Scilly see PARA 36.

11 Audit Commission Act 1998 Sch 2 para 1(f). The reference in the text to charter trustees is a reference to any charter trustees constituted under the Local Government Act 1972 s 246: see PARA 108.

12 Audit Commission Act 1998 Sch 2 para 1(h). As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

13 Audit Commission Act 1998 Sch 2 para 1(i). As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

14 Audit Commission Act 1998 Sch 2 para 1(j). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

15 Audit Commission Act 1998 Sch 2 para 1(jj) (added by the Countryside and Rights of Way Act 2000 s 86(2), Sch 13 para 8). The reference in the text to conservation boards is a reference to conservation boards established by order under the Countryside and Rights of Way Act 2000 s 86: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 660.

16 Audit Commission Act 1998 Sch 2 para 1(k). As to police authorities established under the Police Act 1996 see s 3; and **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

17 Audit Commission Act 1998 Sch 2 para 1(m) (substituted by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 88). The fire and rescue authorities referred to in the text are those constituted by a scheme under the Fire and Rescue Services Act 2004 s 2, or a scheme to which s 4 applies: see **FIRE SERVICES**.

18 Audit Commission Act 1998 Sch 2 para 1(ma) (added by the Local Government and Public Involvement in Health Act 2007 s 209(2), Sch 13, Pt 2, para 52). A joint waste authority is an authority established for an area in England under the Local Government and Public Involvement in Health Act 2007 s 207: see PARA 51.

19 Audit Commission Act 1998 Sch 2 para 1(n).

20 Audit Commission Act 1998 Sch 2 para 1(o). As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

21 Audit Commission Act 1998 Sch 2 para 1(p) (substituted by the Criminal Justice and Court Services Act 2000 s 4(3), Sch 1 para 17(3)(b)). The reference in the text to local probation boards is a reference to local probation boards established under the Criminal Justice and Court Services Act 2000 s 4: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 737.

22 Audit Commission Act 1998 Sch 2 para 1(q) (added by the Offender Management Act 2007 s 5(6), Sch 1 para 13(4)(b)). As to probation trusts see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 733 et seq. A Welsh probation trust is defined in the Offender Management Act 2007 Sch 1 para 13(6).

23 As to local government in London see PARA 35; and **LONDON GOVERNMENT**.

24 Audit Commission Act 1998 Sch 2 para 2(a). A reference in the Audit Commission Act 1998 to the accounts of a body in relation to the Common Council of the City of London is a reference to the accounts mentioned in Sch 2 para 2(a), (b) (see the text and note 25): s 53(3)(a).

25 Audit Commission Act 1998 Sch 2 para 2(b). See also note 24. The superannuation fund referred to in the text is the superannuation fund maintained and administered under the Local Government Pension Scheme Regulations: see PARA 448 et seq.

26 Audit Commission Act 1998 Sch 2 para 4. As to modifications of the Audit Commission Act 1998 in relation to a passenger transport executive see s 30. As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247 et seq.

Where a passenger transport executive has a subsidiary it must exercise its control over it so as to ensure that it appoints only auditors who: (1) are approved by the Audit Commission for appointment as the subsidiary's auditors; and (2) are eligible for appointment under the Companies Act 2006 Pt 42 (see **COMPANIES** vol 15 (2009) PARA 969): Audit Commission Act 1998 s 31(1) (amended by SI 2008/948). For these purposes, 'subsidiary' means a subsidiary within the meaning of the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25): Audit Commission Act 1998 s 31(3). As to the establishment of the Audit Commission see PARA 744.

Where a company would, if a passenger transport executive and any other body or bodies subject to audit were a single body corporate, be a subsidiary of that body corporate, the Audit Commission Act 1998 s 31(1) does not apply, but it is the joint duty of the passenger transport executive and the other body or bodies concerned to exercise such control over the company as the passenger transport executive is required by s 31(1) to exercise over one of its subsidiaries: see s 31(2).

27 Audit Commission Act 1998 Sch 2 para 1A (added by SI 2003/1324; substituted by the Health Act 2006 s 80(1), Sch 8 paras 39, 42(1), (3); and amended by virtue of the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 281, 297). The accounts of health service bodies are prepared under the National Health Service Act 2006 Sch 15 para 3(1): see **HEALTH SERVICES** vol 54 (2008) PARA 518.

28 As to the Secretary of State see PARA 96.

29 Audit Commission Act 1998 s 2(1)(a).

30 'Auditor', in relation to the accounts of any body, means (except in the Audit Commission Act 1998 s 31(1) (see note 25)) the person or any of the persons appointed by the Audit Commission to act as auditor in relation to those accounts and, to the extent provided by s 3(11) (see PARA 758), includes a person assisting an auditor under arrangements approved under s 3(9) (see PARA 758): s 53(1).

31 Audit Commission Act 1998 s 2(1)(b).

UPDATE

757 Required audit of accounts

TEXT AND NOTES 1-22--See also Audit Commission Act 1998 Sch 2 para 1(r), (s) (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 89).

NOTE 26--In definition of 'subsidiary' reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159 (see **COMPANIES** vol 14 (2009) PARA 25): Audit Commission Act 1998 s 31(3) (definition amended by SI 2009/1941).

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758. Appointment of auditors.

An auditor¹ appointed by the Audit Commission² to audit the accounts of a body subject to audit³ may be:

- 783 (1) an officer of the Commission⁴;
- 784 (2) an individual who is not an officer of the Commission⁵; or
- 785 (3) a firm of individuals who are not officers of the Commission⁶.

Where two or more auditors are appointed in relation to the accounts of a body, some but not others may be officers of the Commission and they may be appointed:

- 786 (a) to act jointly⁷;
- 787 (b) to act separately in relation to different parts of the accounts⁸; or
- 788 (c) to discharge different functions in relation to the audit⁹.

Before appointing an auditor or auditors to audit the accounts of a body other than a health service body¹⁰ the Commission must consult that body¹¹. For the purpose of assisting the Commission in deciding on the appointment of an auditor or auditors in relation to the accounts of a body other than a health service body, the Commission may require the body to make available for inspection by or on behalf of the Commission such documents relating to any accounts of the body as the Commission may reasonably require for that purpose¹².

A person may not be appointed by the Commission as an auditor unless:

- 789 (i) he is a member of one or more of the specified bodies¹³;
- 790 (ii) he has such other qualifications as may be approved for these purposes by the Secretary of State¹⁴; or
- 791 (iii) he was approved before 1 April 1996 by the Secretary of State¹⁵, and the approval has not been withdrawn¹⁶.

The appointment by the Commission of an auditor who is not an officer of the Commission is to be on such terms and for such period as the Commission may determine¹⁷.

Arrangements may be approved by the Commission, either generally or in a particular case, for a person or persons to assist an auditor appointed by the Commission (whether the auditor is an officer of the Commission or not) by carrying out such of the auditor's functions under the Audit Commission Act 1998 as may be specified in the arrangements¹⁸.

1 As to the meaning of 'auditor' see PARA 757 note 30.

2 As to the establishment of the Audit Commission see PARA 744.

3 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies which are subject to audit see PARA 757.

4 Audit Commission Act 1998 s 3(1)(a). As to the appointment of officers of the Commission see PARA 748.

5 Audit Commission Act 1998 s 3(1)(b).

6 Audit Commission Act 1998 s 3(1)(c).

7 Audit Commission Act 1998 s 3(2)(a).

8 Audit Commission Act 1998 s 3(2)(b).

9 Audit Commission Act 1998 s 3(2)(c).

10 As to the meaning of 'health service body' see PARA 749 note 2.

11 Audit Commission Act 1998 s 3(3).

12 Audit Commission Act 1998 s 3(4).

13 Audit Commission Act 1998 s 3(5)(a). A firm may not be appointed by the Commission as an auditor unless the appointment provides that the audit may be conducted only by a member or employee of the firm who is a member of one or more of the specified bodies: s 3(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 159). The bodies referred to in s 3(5), (6) are: the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Association of Certified Accountants, the Chartered Institute of Public Finance and Accountancy, the Institute of Chartered Accountants in Ireland, and any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for these purposes: s 3(7). As to the Secretary of State see PARA 96. As to the meaning of 'United Kingdom' see PARA 116 note 18.

14 Audit Commission Act 1998 s 3(5)(b).

15 le under the Local Government Finance Act 1982 s 13(5) (repealed).

16 Audit Commission Act 1998 s 3(5)(c).

17 Audit Commission Act 1998 s 3(8).

18 Audit Commission Act 1998 s 3(9). Section 3(9) does not apply to functions under s 19 (see PARA 773): s 3(10). References in the Audit Commission Act 1998 ss 4-55 to an auditor include, in relation to any function of an auditor, a reference to any person carrying out that function under arrangements approved under s 3(9): s 3(11).

UPDATE

758 Appointment of auditors

TEXT AND NOTE 6--Audit Commission Act 1998 s 3(1)(c) substituted: SI 2009/1941.

TEXT AND NOTES 13-16--A person appointed by the Commission as an auditor must (1) be eligible for appointment as a statutory auditor; (2) be a member of one or more of the bodies listed in the Audit Commission Act 1998 s 3(7); or (3) have such other qualifications as may be approved for the purposes of s 3 by the Secretary of State: Audit Commission Act 1998 s 3(5) (substituted by SI 2009/1941).

NOTE 13--Audit Commission Act 1998 s 3(6) omitted, s 3(7) amended: SI 2009/1941.

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759. Code of audit practice.

The Audit Commission¹ must prepare, and keep under review, a code of audit practice prescribing the way in which auditors² are to carry out their functions under the Audit Commission Act 1998³. A different code may be prepared with respect to the audit of the accounts of health services bodies⁴ as compared with the code applicable to the accounts of other bodies⁵. A code prepared under these provisions must embody what appears to the Commission to be the best professional practice with respect to the standards, procedures and

techniques to be adopted by auditors⁶. A code does not come into force until approved by a resolution of each House of Parliament, and its continuation in force is subject to its being so approved at intervals of not more than five years⁷.

The Commission must send copies of any code prepared under these provisions, and of any alterations made to such a code, to the Secretary of State⁸ who must lay them before Parliament; and the Commission must from time to time publish any such code as it is for the time being in force⁹.

Before preparing or altering a code applicable to any accounts, the Commission must consult:

- 792 (1) if the accounts are or include those of health service bodies, such organisations connected with the health service¹⁰ as appear to the Commission to be concerned¹¹;
- 793 (2) if the accounts are or include those of other bodies, such associations of local authorities¹² as appear to the Commission to be concerned¹³; and
- 794 (3) in any case, the National Assembly for Wales, the Care Quality Commission and such bodies of accountants as appear to the Commission to be appropriate¹⁴.

The Care Quality Commission's agreement must be obtained before the Audit Commission prepares or alters provisions of a code which are applicable to accounts which are or include accounts of health service bodies, and concern the Commission's functions with regard to securing economy, efficiency and effectiveness in the audited body's use of resources¹⁵.

1 As to the Audit Commission see PARA 744 et seq.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 Audit Commission Act 1998 s 4(1).

4 As to the meaning of 'health service body' see PARA 749 note 2.

5 Audit Commission Act 1998 s 4(2).

6 Audit Commission Act 1998 s 4(3).

7 Audit Commission Act 1998 s 4(4). Section 4(4) does not preclude alterations to a code being made by the Commission in the intervals between its being approved in accordance with s 4(4): s 4(5).

8 As to the Secretary of State see PARA 96.

9 Audit Commission Act 1998 s 4(6).

10 As to the meaning of 'health service' see PARA 745 note 8.

11 Audit Commission Act 1998 s 4(7)(a) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 12(2)(a); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 64(1), (2)(b), Sch 15, Pt 1).

12 As to the meaning of 'local authority' see PARA 23.

13 Audit Commission Act 1998 s 4(7)(b) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 12(2)(a); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 64(1), (2)(a), Sch 15, Pt 1).

14 Audit Commission Act 1998 s 4(7)(c) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 12(2)(c); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 64(1), (2)(c)).

15 Audit Commission Act 1998 s 4(8) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), (3); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3,

para 64(1), (3)). The functions noted in the text are those under the Audit Commission Act 1998 s 5(1)(e): see PARA 760.

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760. General duties of auditors.

In auditing accounts required to be audited¹ in accordance with the Audit Commission Act 1998, an auditor² must by examination of the accounts and otherwise satisfy himself:

- 795 (1) if they are accounts of a health service body³, that they are prepared in accordance with directions under the National Health Service Act 2006⁴;
- 796 (2) in any other case, that they are prepared in accordance with regulations under the Audit Commission Act 1998⁵;
- 797 (3) that they comply with the requirements of all other statutory provisions⁶ applicable to the accounts⁷;
- 798 (4) that proper practices have been observed in the compilation of the accounts⁸; and
- 799 (5) that the body whose accounts are being audited has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources⁹.

The auditor must comply with the code of audit practice¹⁰ applicable to the accounts being audited as it is for the time being in force¹¹.

1 See PARA 757.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 As to the meaning of 'health service body' see PARA 749 note 2.

4 Audit Commission Act 1998 s 5(1)(a) (amended by virtue of the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 281, 295). The directions referred to in the text are directions under the National Health Service Act 2006 Sch 15 para 3(1): see **HEALTH SERVICES** vol 54 (2008) PARA 518.

5 Audit Commission Act 1998 s 5(1)(b). The regulations referred to in the text are regulations under s 27: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628.

6 'Statutory provision' means any provision contained in or having effect under any enactment: Audit Commission Act 1998 s 53(1).

7 Audit Commission Act 1998 s 5(1)(c).

8 Audit Commission Act 1998 s 5(1)(d).

9 Audit Commission Act 1998 s 5(1)(e).

10 As to codes of audit practice see PARA 759.

11 Audit Commission Act 1998 s 5(2).

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761. Auditors' right to documents and information.

An auditor¹ has a right of access at all reasonable times to every document relating to a body subject to audit² which appears to him necessary for the purposes of his functions under the Audit Commission Act 1998³. An auditor may:

- 800 (1) require a person holding or accountable for any such document to give him such information and explanation as he thinks necessary for the purposes of his functions under the Audit Commission Act 1998⁴; and
- 801 (2) if he thinks it necessary, require the person to attend before him in person to give the information or explanation or to produce the document⁵.

The auditor may also:

- 802 (a) require any officer or member of a body subject to audit to give him such information or explanation as he thinks necessary for the purposes of his functions under the Audit Commission Act 1998⁶; and
- 803 (b) if he thinks it necessary, require the officer or member to attend before him in person to give the information or explanation⁷.

In connection with inspecting a document kept in electronic form, an auditor may:

- 804 (i) obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he considers is or has been used in connection with the document⁸;
- 805 (ii) require a relevant person⁹ to afford him such reasonable assistance as he may require for that purpose¹⁰.

Every body subject to audit must provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under the Audit Commission Act 1998¹¹.

A person who without reasonable excuse obstructs the exercise of the foregoing powers¹² or fails to comply with any requirement of an auditor in that regard is guilty of an offence and liable on summary conviction to a fine¹³.

1 As to the meaning of 'auditor' see PARA 757 note 30.

2 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

3 Audit Commission Act 1998 s 6(1). This right includes power to inspect copy or take away the document: s 6(1A) (added by the Local Government and Public Involvement in Health Act 2007 s 151(1)(a)).

4 Audit Commission Act 1998 s 6(2)(a).

5 Audit Commission Act 1998 s 6(2)(b). In relation to a document kept in electronic form, the power in s 6(2)(b) to require a person to produce a document includes power to require it to be produced in a form in which it is legible and can be taken away: s 6(4A) (s 6(4A)-(4C) added by the Local Government and Public Involvement in Health Act 2007 s 151(1)(b)).

6 Audit Commission Act 1998 s 6(4)(a).

7 Audit Commission Act 1998 s 6(4)(b).

8 Audit Commission Act 1998 s 6(4B)(a) (as added: see note 5).

9 A person is relevant for these purposes if he is (1) the person by whom or on whose behalf the computer is or has been used; or (2) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material: Audit Commission Act 1998 s 6(4C) (as added: see note 5).

10 Audit Commission Act 1998 s 6(4B)(b) (as added: see note 5).

11 Audit Commission Act 1998 s 6(5) (amended by the Local Government and Public Involvement in Health Act 2007 s 151(1)(c)).

12 Ie the powers conferred by the Audit Commission Act 1998 s 6: see s 6(6) (as amended: see note 13).

13 See the Audit Commission Act 1998 s 6(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 151(1)(d)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (see s 6(6)(a)), and to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence (see s 6(6)(b)). As to the standard scale see PARA 105 note 7. Any expenses incurred by an auditor in connection with proceedings for an offence under s 6(6) alleged to have been committed in relation to the audit of the accounts of any body, so far as not recovered from any other source, are recoverable from that body: s 6(7).

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762. Fees for audit.

The Audit Commission¹ must prescribe a scale or scales of fees in respect of the audit of accounts which are required to be audited² in accordance with the Audit Commission Act 1998³. Before prescribing any such scale of fees the Commission must consult:

806 (1) if the scale relates to the audit of accounts of a health service body⁴, such organisations connected with the health service⁵ as appear to the Audit Commission to be concerned⁶;

807 (2) if the scale relates to the audit of accounts of any other body, such associations of local authorities⁷ as appear to the Commission to be concerned⁸; and

808 (3) in any case, the Care Quality Commission and such bodies of accountants as appear to the Commission to be appropriate⁹.

A body subject to audit¹⁰ must pay to the Commission the fee applicable to the audit in accordance with the appropriate scale¹¹. However, if it appears to the Commission that the work involved in a particular audit was substantially more or less than that envisaged by the appropriate scale, the Commission may charge a larger or smaller fee¹².

For the purpose of determining the fee payable for an audit, a body whose accounts are being audited (or, if it is a parish meeting¹³, its chairman) must complete a statement containing such information as the Commission may require and submit it to the auditor¹⁴, and provide the Commission with such further information as it may at any time require¹⁵. The fee payable for an audit must be the same whether the auditor who carries it out is an officer of the Commission or not¹⁶.

If the Secretary of State¹⁷ considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales prescribed by the Commission¹⁸. Before making any such regulations, the Secretary of State must consult the Audit Commission, the Care Quality Commission, such associations of local authorities as appear to him to be concerned, and such bodies of accountants as appear to him to be appropriate¹⁹.

1 As to the establishment of the Audit Commission see PARA 744.

2 See PARA 757.

3 Audit Commission Act 1998 s 7(1).

4 As to the meaning of 'health service body' see PARA 749 note 2.

5 As to the meaning of 'health service' see PARA 745 note 8.

6 Audit Commission Act 1998 s 7(2)(a) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(4)(a); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 65(1), (2)(a)).

7 As to the meaning of 'local authority' see PARA 23.

8 Audit Commission Act 1998 s 7(2)(b).

9 Audit Commission Act 1998 s 7(2)(c) (amended by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 65(1), (2)(b)).

10 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

11 Audit Commission Act 1998 s 7(3).

12 Audit Commission Act 1998 s 7(4).

13 As to parish meetings see PARA 34.

14 Audit Commission Act 1998 s 7(5)(a). As to the meaning of 'auditor' see PARA 757 note 30. The auditor must send the statement mentioned in s 7(5)(a) to the Commission on the conclusion of the audit with a certificate that the statement is correct to the best of his knowledge and belief: s 7(6).

15 Audit Commission Act 1998 s 7(5)(b).

16 Audit Commission Act 1998 s 7(7).

17 As to the Secretary of State see PARA 96.

18 Audit Commission Act 1998 s 7(8). If the Secretary of State does prescribe a scale of fees for a period, references in s 7(3), (4) (see the text and notes 10-12) to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State: s 7(8). At the date at which this volume states the law no regulations had been made under s 7(8).

19 Audit Commission Act 1998 s 7(9) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 12(1), (4)(b); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 65(1), (3)).

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(B) AUDITORS' REPORTS AND RECOMMENDATIONS

763. Immediate and other reports in public interest.

In auditing accounts required to be audited¹ in accordance with the Audit Commission Act 1998, the auditor² must consider whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public³, and whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit⁴.

Any report under these provisions must be sent by the auditor to the body concerned (or, if it is a parish meeting⁵, to its chairman) forthwith if it is an immediate report⁶; otherwise it must be sent not later than 14 days after conclusion of the audit⁷. A copy of the report must be sent by the auditor to the Audit Commission⁸ forthwith if it is an immediate report; otherwise it must be sent not later than 14 days after conclusion of the audit⁹.

The body concerned (and, in the case of the Greater London Authority, the London Assembly¹⁰) must take the report into consideration¹¹. The agenda supplied to the members for the meeting of the body at which the report is considered must be accompanied by the report¹².

1 See PARA 757.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 Audit Commission Act 1998 s 8(a).

4 Audit Commission Act 1998 s 8(b).

5 As to parish meetings see PARA 34.

6 Audit Commission Act 1998 s 10(1)(a).

7 Audit Commission Act 1998 s 10(1)(b).

8 See the Audit Commission Act 1998 s 10(2) (amended by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 2(1), (2)). As to the establishment of the Audit Commission see PARA 744. In the case of a health service body, a copy of the report must also be sent to the Secretary of State; and, in the case of a functional body or the London Pensions Fund Authority, a copy of the report must also be sent to the Mayor of London: see the Audit Commission Act 1998 s 10(2) (as so amended). As to the meaning of 'health service body' see PARA 749 note 2. As to the meaning of 'functional body' see PARA 757 note 5. As to the Secretary of State see PARA 96. As to the Mayor of London see **LONDON GOVERNMENT**.

9 Audit Commission Act 1998 s 10(2)(a), (b) (as amended: see note 8). The Commission must send to the Secretary of State a copy of any report of which a copy is sent to the Commission under s 10(2) and which relates to a police authority established under the Police Act 1996 s 3 (see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq): Audit Commission Act 1998 s 32(1) (amended by the Serious Organised Crime and Police Act 2005 s 59, Sch 4 para 111). If it appears to the Commission appropriate to do so, it may send to the Secretary of State a copy of any document which relates to one or more police authorities established under the Police Act 1996 s 3 and which has been sent (or a copy of which has been sent) by the Commission to such an authority: Audit Commission Act 1998 s 32(2) (amended by the Criminal Justice and Police Act 2001 Sch 7, Pt 5(1)). Any reference in the Audit Commission Act 1998 s 32 to a police authority established under the Police Act 1996 s 3 includes a reference to the Metropolitan Police Authority: Audit Commission Act 1998 s 32(3) (added by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 8). As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) PARAS 147-155. In relation to a police authority established for a police area in Wales, the provisions of the Audit Commission Act 1998 s 32(1), (2) have effect as if the references to the Secretary of State included references to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 97.

10 As to the Greater London Authority and the London Assembly see **LONDON GOVERNMENT**.

11 Audit Commission Act 1998 s 10(3) (amended by the Greater London Authority Act 1999 Sch 8 paras 1, 2(1), (3)(a)). The report must be considered in accordance with the Audit Commission Act 1998 s 11 (see PARA 767), s 11A (see PARA 767), s 12 (see PARA 768) (see s 10(3)(a) (amended by the Greater London Authority Act 1999 Sch 8 paras 1, 2(1), (3)(b))) or, if the Audit Commission Act 1998 s 11 does not apply to the body, as soon as practicable after receiving it (see s 10(3)(b)).

12 Audit Commission Act 1998 s 10(4). In the case of a report relating to the Greater London Authority, s 10(4) applies in relation to a meeting of the London Assembly under s 11A(3) (see PARA 767) (taking the reference to 'the body' as a reference to the London Assembly): s 10(4A) (added by the Greater London Authority Act 1999 Sch 8 paras 1, 2(1), (4)).

The report is not to be excluded from the matter supplied under the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b) (see PARA 650) or the Local Government Act 1972 s 100B(7) (see PARA 662) (supply of agenda etc to newspapers) (see the Audit Commission Act 1998 s 10(5)(a)); or from the documents open to inspection under the Local Government Act 1972 s 100B(1) (see PARA 662) (public access to agenda and reports before meetings) (see the Audit Commission Act 1998 s 10(5)(b)).

The Local Government Act 1972 Pt VA (ss 100A-100K) (see PARA 661 et seq) has effect in relation to the report as if s 100C(1)(d) (access to copies of reports: see PARA 663) were not limited to so much of the report as relates to an item during which the meeting was open to the public: Audit Commission Act 1998 s 10(6).

Nothing in s 13 (additional publicity for reports: see PARA 764) affects the operation of s 10(4)-(6): s 13(7).

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764. Additional publicity for immediate reports.

Where an auditor¹ has sent an immediate report² to a body or its chairman³, except where the body is a health service body⁴, any member of the public may from the time when the report is received⁵:

- 809 (1) inspect the report at all reasonable times without payment⁶;
- 810 (2) make a copy of it, or of any part of it⁷; and
- 811 (3) require the body or chairman to supply him with a copy of it, or of any part of it, on payment of a reasonable sum⁸.

On receiving the report⁹, the body (or, if a parish meeting¹⁰, its chairman) must forthwith publish in one or more local newspapers circulating in the area of the body a notice which identifies the subject matter of the report and states that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in the notice; and the body, if not a parish meeting, must in addition forthwith supply a copy of the report to every member of the body¹¹.

The auditor may notify any person he thinks fit of the fact that he has made the report, and supply a copy of it or of any part of it to any person he thinks fit¹².

A person who has the custody of an immediate report and:

- 812 (a) obstructs a person in the exercise of a right conferred by head (1) or head (2) above¹³; or
- 813 (b) refuses to supply a copy of the report or of part of it (as the case may be) to a person entitled to the copy by virtue of head (3) above¹⁴,

is guilty of an offence¹⁵.

- 1 As to the meaning of 'auditor' see PARA 757 note 30.
- 2 As to immediate reports see PARA 763.
- 3 le under the Audit Commission Act 1998 s 10(1): see PARA 763.
- 4 Audit Commission Act 1998 s 13(1). As to the meaning of 'health service body' see PARA 749 note 2.
- 5 le by virtue of the Audit Commission Act 1998 s 10(1): see PARA 763.
- 6 Audit Commission Act 1998 s 13(2)(a).
- 7 Audit Commission Act 1998 s 13(2)(b).
- 8 Audit Commission Act 1998 s 13(2)(c).
- 9 le by virtue of the Audit Commission Act 1998 s 10(1): see PARA 763.
- 10 As to parish meetings see PARA 34.
- 11 Audit Commission Act 1998 s 13(3). A person who fails to comply with a requirement of s 13(3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 13(6). As to the standard scale see PARA 105 note 7.
- 12 Audit Commission Act 1998 s 13(4).
- 13 Audit Commission Act 1998 s 13(5)(a).
- 14 Audit Commission Act 1998 s 13(5)(b).
- 15 Audit Commission Act 1998 s 13(5). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 13(5).

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765. Additional publicity for non-immediate reports.

Where he has sent a report that is not an immediate report to a body or its chairman¹ (except where the body is a health service body²), an auditor³ may⁴: (1) notify any person he thinks fit of the fact that he has made the report⁵; (2) publish the report in any way he thinks fit⁶; and (3) supply a copy of the report, or of any part of it, to any person he thinks fit⁷.

From the time when the report is sent⁸:

- 814 (a) the auditor must ensure that any member of the public may inspect the report at all reasonable times without payment⁹, and make a copy of the report or of any part of it¹⁰; and
- 815 (b) any member of the public may require the auditor to supply him with a copy of the report, or of any part of it, on payment of a reasonable sum¹¹.

However from the end of the period of one year beginning with the day when the report is sent¹², these obligations of the auditor¹³ cease to be his obligations, but become obligations of the Audit Commission¹⁴ instead¹⁵.

- 1 le under the Audit Commission Act 1998 s 10(1): see PARA 763.
- 2 As to the meaning of 'health service body' see PARA 749 note 2.
- 3 As to the meaning of 'auditor' see PARA 757 note 30.
- 4 Audit Commission Act 1998 s 13A(1), (2) (s 13A added by Local Government Act 2003 s 108).
- 5 Audit Commission Act 1998 s 13A(2)(a) (as added: see note 4).
- 6 Audit Commission Act 1998 s 13A(2)(b) (as added: see note 4).
- 7 Audit Commission Act 1998 s 13A(2)(c) (as added: see note 4).
- 8 le under the Audit Commission Act 1998 s 10(1): see PARA 763.
- 9 Audit Commission Act 1998 s 13A(3)(a)(i) (as added: see note 4).
- 10 Audit Commission Act 1998 s 13A(3)(a)(ii) (as added: see note 4).
- 11 Audit Commission Act 1998 s 13A(3)(b) (as added: see note 4).
- 12 le under the Audit Commission Act 1998 s 10(1): see PARA 763.
- 13 le under the Audit Commission Act 1998 s 13A(3): see the text and notes 8-11.
- 14 As to the establishment of the Audit Commission see PARA 744.
- 15 Audit Commission Act 1998 s 13A(4) (as added: see note 4).

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766. General report.

When an auditor¹ has concluded his audit of the accounts of any body under the Audit Commission Act 1998 he must enter on the relevant statement of accounts prepared pursuant to regulations² (or, where no such statement is required to be prepared, on the accounts) a certificate that he has completed the audit in accordance with the Audit Commission Act 1998³, and his opinion on the statement (or, as the case may be, on the accounts)⁴. Where an auditor makes a report to the body concerned⁵ at the conclusion of the audit, he may include the certificate and opinion in that report instead of making an entry on the statement or accounts⁶.

- 1 As to the meaning of 'auditor' see PARA 757 note 30.
- 2 le under the Audit Commission Act 1998 s 27: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628.
- 3 Audit Commission Act 1998 s 9(1)(a).
- 4 Audit Commission Act 1998 s 9(1)(b).
- 5 le under the Audit Commission Act 1998 s 8: see PARA 763.
- 6 Audit Commission Act 1998 s 9(2).

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767. Consideration of reports or recommendations.

Certain bodies subject to audit¹ must consider² any report³ and any written recommendation⁴ sent to the body (or, if a parish meeting⁵, its chairman) in connection with the audit of its accounts⁶. The body concerned must consider the report or recommendation at a meeting⁷ held before the end of one month beginning with the day on which the report or recommendation was sent to the body or its chairman, as the case may be⁸. At that meeting the body must decide whether the report requires the body to take any action or whether the recommendation is to be accepted⁹ and what, if any, action to take in response to the report or recommendation¹⁰. If an auditor is satisfied that it is reasonable to allow more time for the body to comply with its duties¹¹ in relation to a report or recommendation, the auditor may, in relation to that report or recommendation, extend the period of one month mentioned above¹².

1 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757. The Audit Commission Act 1998 s 11 applies to every body subject to audit except: charter trustees constituted under the Local Government Act 1972 s 246 (see PARA 108); health service bodies; port health authorities; licensing planning committees; internal drainage boards; local probation boards established under the Criminal Justice and Court Services Act 2000 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 737); probation trusts; and passenger transport executives: Audit Commission Act 1998 s 11(2) (amended by the Criminal Justice and Court Services Act 2000 s 4(3), Sch 1 para 17(3)(a); and the Offender Management Act 2007 s 5(6), Sch 1 para 13(4)(a)). As to the meaning of 'health service body' see PARA 749 note 2. As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq. As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq. As to passenger transport executives see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 247 et seq. As to probation trusts see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 733 et seq.

2 In accordance with the Audit Commission Act 1998 ss 11, 12 (see PARA 768) (and, in the case of a report or recommendations sent to the Greater London Authority, s 11A): s 11(1) (amended by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 3(1), (2)). As to the Greater London Authority see PARA 35; and **LONDON GOVERNMENT**.

3 Audit Commission Act 1998 s 11(1)(a). The reference in the text to a report is a reference to a report under s 8: see PARA 763.

4 Audit Commission Act 1998 s 11(1)(b). The reference in the text to a recommendation is a reference to a recommendation within s 11(3). A written recommendation is within s 11(3) if it is made by an auditor to the body concerned and is stated in the document containing it to be one which in the auditor's opinion should be considered under s 11: s 11(3). As to the meaning of 'auditor' see PARA 757 note 30. Where a written recommendation within s 11(3) is sent to a functional body or the London Pensions Fund Authority, a copy must be sent at the same time to the Mayor of London: s 11(2A) (added by the Greater London Authority Act 1999 Sch 8 paras 1, 3(1), (3)). As to the meaning of 'functional body' see PARA 757 note 5. As to the Mayor of London see PARA 35; and **LONDON GOVERNMENT**.

5 As to parish meetings see PARA 34.

6 Audit Commission Act 1998 s 11(1) (as amended: see note 2).

Nothing in the Local Government Act 1972 s 101 (delegation of functions: see PARA 370) applies to a duty imposed on a body by the Audit Commission Act 1998 s 11: s 11(8). In the case of the London Development Agency or Transport for London, neither the Regional Development Agencies Act 1998 s 2(5), Sch 2 para 7 (delegation by the London Development Agency: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988) nor the Greater London Authority Act 1999 s 154, Sch 10 para 7 (delegation by Transport for London: see **LONDON GOVERNMENT**) is to apply to a duty imposed on either of those bodies by the Audit Commission Act 1998 s 11: s 11(8A) (added by the Greater London Authority Act Sch 8 paras 1, 3(1), (6)). As to Transport for London see **LONDON GOVERNMENT**. As to the London Development Agency see **TRADE AND INDUSTRY** vol 97 (2010) PARA 988.

The Audit Commission Act 1998 s 11 is without prejudice to any duties (so far as they relate to the subject matter of a report or recommendation sent to a body to which s 11 applies) which are imposed by or under the

Audit Commission Act 1998, the Local Government Finance Act 1988 ss 114-116 (functions and reports of finance officers: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 626 et seq), the Local Government and Housing Act 1989 s 5 (functions of monitoring officers: see PARA 429) or any other enactment: Audit Commission Act 1998 s 11(9).

7 In the case of Transport for London, the London Development Agency and the London Pensions Fund Authority, the Local Government Act 1972 Pt VA (ss 100A-100K) (access to meetings etc: see PARA 661 et seq) has effect in relation to the meeting as if that body were a principal council, but subject to the provisions of the Audit Commission Act 1998 s 10(5), (6) (see PARA 763) and s 12(3) (see PARA 768): see s 11(7A) (added by the Greater London Authority Act Sch 8 paras 1, 3(1), (5)). As to the meaning of 'principal council' see PARA 23; definition applied by virtue of the Audit Commission Act 1998 s 53(2). As to meetings generally see PARA 619 et seq.

8 Audit Commission Act 1998 s 11(4) (amended by the Local Government Act 2003 s 107(2)).

9 Audit Commission Act 1998 s 11(5)(a).

10 Audit Commission Act 1998 s 11(5)(b).

11 Ie under the Audit Commission Act 1998 s 11(4) or s 11(5): see the text and notes 8-10.

12 Audit Commission Act 1998 s 11(6) (amended by the Local Government Act 2003 s 107(3)). A period may be extended under s 11(6) whether or not it has already been extended once or more than once: s 11(7).

In relation to the Greater London Authority, the provisions of s 11(4)-(7) (see the text and notes 7-11) do not apply but s 11A has effect in place of them: s 11(3A) (added by the Greater London Authority Act 1999 Sch 8 paras 1, 3(1), (4)).

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768. Publicity for meetings.

A meeting may not be held¹ for consideration of an auditor's² report or recommendation unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the body concerned, a notice³ which:

- 816 (1) states the time and place of the meeting⁴;
- 817 (2) indicates that the meeting is to be held to consider an auditor's report or recommendation (as the case may be)⁵; and
- 818 (3) describes the subject matter of the report or recommendation⁶.

The body concerned must ensure that, as soon as practicable after the meeting⁷:

- 819 (a) the auditor of its accounts is notified of the decisions made⁸; and
- 820 (b) a notice containing a summary of those decisions which has been approved by the auditor is published in a newspaper circulating in that body's area⁹.

1 Ie for the purposes of the Audit Commission Act 1998 s 11 (see PARA 767) or s 11A. As to meetings generally see PARA 619 et seq.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 See the Audit Commission Act 1998 s 12(1) (amended by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 5(1), (2)).

4 Audit Commission Act 1998 s 12(1)(a).

5 Audit Commission Act 1998 s 12(1)(b).

6 Audit Commission Act 1998 s 12(1)(c).

7 Audit Commission Act 1998 s 12(2) (amended by the Greater London Authority Act 1999 Sch 8 paras 1, 5(1), (3)(a)). In the case of the Greater London Authority, as soon as practicable after the making of the decisions under the Audit Commission Act 1998 s 11A(6).

8 Audit Commission Act 1998 s 12(2)(a) (amended by the Greater London Authority Act 1999 Sch 8 paras 1, 5(1), (3)(b)). The reference in the text to decisions is a reference to decisions made in pursuance of the Audit Commission Act 1998 s 11(5) (see PARA 767) or s 11A(6).

9 Audit Commission Act 1998 s 12(2)(b). The notice required by s 12(2)(b) in relation to a meeting need not summarise any decision made while the public were excluded from the meeting: (1) under the Local Government Act 1972 s 100A(2) (see PARA 661); (2) in pursuance of a resolution under the Local Government Act 1972 s 100A(4) (see PARA 661); or (3) in pursuance of a resolution under the Public Bodies (Admission to Meetings) Act 1960 s 1(2) (see PARA 647): Audit Commission Act 1998 s 12(3)(a). However, if the Local Government Act 1972 ss 100C, 100D (see PARAS 663-664) apply in relation to the meeting, the notice must indicate the documents in relation to the meeting which are open for inspection in accordance with those provisions: Audit Commission Act 1998 s 12(3)(b).

Section 12 is without prejudice to, and in addition to, any provision made in relation to meetings of the body in question by s 10(4)-(6) (see PARA 763) or by or under the Local Government Act 1972, the Public Bodies (Admission to Meetings) Act 1960 or any other enactment: Audit Commission Act 1998 s 12(4).

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(C) PUBLIC INSPECTION AND OBJECTIONS

769. Inspection of statements of accounts and auditors' reports.

A local government elector¹ for the area of a body subject to audit², other than a health service body³, may:

- 821 (1) inspect and make copies of any statement of accounts prepared by the body pursuant to regulations under the Audit Commission Act 1998⁴;
- 822 (2) inspect and make copies of any report, other than an immediate report⁵, made to the body by an auditor⁶; and
- 823 (3) require copies of any such statement or report to be delivered to him on payment of a reasonable sum for each copy⁷.

A document which a person is entitled to inspect under these provisions may be inspected by him at all reasonable times and without payment⁸. A person who has the custody of any such document and who obstructs a person in the exercise of a right under these provisions to inspect or make copies of the document⁹ or refuses to give copies of the document to a person entitled under these provisions to obtain them, is guilty of an offence and liable on summary conviction to a fine¹⁰.

1 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by virtue of the Audit Commission Act 1998 s 53(2). A reference in the Audit Commission Act 1998 to a local government elector for any area:

88 (1) in relation to the Broads Authority, is a reference to a local government elector for the area of any participating authority (as defined by the Norfolk and Suffolk Broads Act 1988 s 25) (Audit Commission Act 1998 s 53(4)(a)); and

89 (2) in relation to a national park authority which is the local planning authority for a national park, is a reference to a local government elector for any area the whole or any part of which is comprised in that park (s 53(4)(b)).

As to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq; and as to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

3 As to the meaning of 'health service body' see PARA 749 note 2.

4 Audit Commission Act 1998 s 14(1)(a). The regulations referred to in the text are regulations under s 27: see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628.

5 As to immediate and other reports see PARA 763.

6 Audit Commission Act 1998 s 14(1)(b). As to the meaning of 'auditor' see PARA 757 note 30.

7 Audit Commission Act 1998 s 14(1)(c).

8 Audit Commission Act 1998 s 14(2).

9 References in the Audit Commission Act 1998 s 14 to copies of a document include references to copies of any part of it: s 14(4).

10 Audit Commission Act 1998 s 14(3). The penalty is a fine not exceeding level 3 on the standard scale: see s 14(3). As to the standard scale see PARA 105 note 7.

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770. Inspection of documents and questions at audit.

At each audit under the Audit Commission Act 1998, other than an audit of accounts of a health service body¹, any persons interested may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and make copies of all or any part of the accounts and those other documents². At the request of a local government elector³ for any area to which the accounts relate, the auditor⁴ must give the elector, or any representative of his, an opportunity to question the auditor about the accounts⁵. Nothing in these provisions entitles a person to inspect so much of any accounts or other document as contains personal information⁶ about a member of the staff of the body whose accounts are being audited, or to require any such information to be disclosed in answer to any question⁷.

1 As to the meaning of 'health service body' see PARA 749 note 2.

2 Audit Commission Act 1998 s 15(1). See *R (on the application of HTV Ltd) v Bristol County Council* [2004] EWHC 1219 (Admin), [2004] 1 WLR 2717, [2004] LGR 770 ('persons interested' included non-domestic ratepayer).

3 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by virtue of the Audit Commission Act 1998 s 53(2). See further PARA 769 note 1.

4 As to the meaning of 'auditor' see PARA 757 note 30.

5 Audit Commission Act 1998 s 15(2).

6 For the purposes of the Audit Commission Act 1998 s 15(3), information is personal information if:

90 (1) it identifies a particular individual or enables a particular individual to be identified (s 15(3A)(a) (s 15(3A) added by the Local Government and Public Involvement in Health Act 2007 s 160(1), (3)));

91 (2) the auditor considers that it should not be inspected or disclosed (Audit Commission Act 1998 s 15(3A)(b) (as so added)).

Information is personal information if it is information about a member of staff of a body whose accounts are being audited which relates specifically to a particular individual and is available to the body for reasons connected with the fact (s 15(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 160(1), (4))):

92 (a) that that individual holds or has held an office or employment under that body (Audit Commission Act 1998 s 15(4)(a)); or

93 (b) that payments or other benefits in respect of an office or employment under any other person are or have been made or provided to that individual by that body (s 15(4)(b)).

For the purposes of s 15(4)(b), payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to him in respect of his ceasing to hold the office or employment: s 15(5).

7 Audit Commission Act 1998 s 15(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 160(1), (2)).

UPDATE

770 Inspection of documents and questions at audit

NOTE 2--See *R (on the application of Veolia ES Nottinghamshire Ltd) v Nottinghamshire CC* [2009] EWHC 2382 (Admin), [2009] All ER (D) 78 (Oct) (the phrase 'accounts to be audited' in 1998 Act s 15(1) means the general ledger and any account feeding into it; there is no duty to keep commercial confidentiality under s 15).

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771. Right to make objections at audit.

At each audit of accounts under the Audit Commission Act 1998, other than an audit of accounts of a health service body¹, a local government elector² for an area to which the accounts relate may make objections to the auditor³. Such an objection must be made in writing⁴. At the same time as the objection is sent to the auditor, a copy must be sent to the body whose accounts are being audited⁵.

1 As to the meaning of 'health service body' see PARA 749 note 2.

2 As to the meaning of 'local government elector' see PARA 126 note 2; definition applied by virtue of the Audit Commission Act 1998 s 53(2). See further PARA 769 note 1.

3 Audit Commission Act 1998 s 16(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 161(1), (2)). Objections may be made: (1) as to any matter in respect of which the auditor could take action under the Audit Commission Act 1998 s 17 (see PARA 772) (s 16(1)(a) (amended by the Local Government Act 2000 s 107, Sch 6)); or (2) as to any other matter in respect of which the auditor could make a report under the Audit Commission Act 1998 s 8 (see PARA 763) (s 16(1)(b)). As to the meaning of 'auditor' see PARA 757 note 30. For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 161(4).

4 Audit Commission Act 1998 s 16(2) (substituted by the Local Government and Public Involvement in Health Act 2007 s 161(1), (3)). For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 161(4).

5 Audit Commission Act 1998 s 16(3) (substituted by the Local Government and Public Involvement in Health Act 2007 s 161(1), (3)). For transitional provisions see the Local Government and Public Involvement in Health Act 2007 s 161(4).

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(D) UNLAWFUL ITEMS OF ACCOUNT AND EXPENDITURE

772. Declaration that item of account is unlawful.

Where it appears to the auditor¹ carrying out an audit under the Audit Commission Act 1998, other than an audit of accounts of a health service body², that an item of account is contrary to law, the auditor may apply to the court³ for a declaration that the item is contrary to law⁴. On an application under these provisions the court may make or refuse to make the declaration asked for, and if it makes the declaration then it may also order rectification of the accounts⁵.

A person who has made an objection⁶ and is aggrieved by a decision of an auditor not to apply for a declaration under these provisions may: (1) not later than six weeks after being notified of the decision, require the auditor to state in writing the reasons for his decision⁷; and (2) appeal against the decision to the court⁸. On such an appeal the court has the same powers in relation to the item of account to which the objection relates as if the auditor had applied for the declaration⁹.

On an application or appeal under these provisions relating to the accounts of a body, the court may make such order as it thinks fit for the payment by the body of expenses incurred, in connection with the application or appeal, by the auditor, or the person by whom the appeal is brought¹⁰.

1 As to the meaning of 'auditor' see PARA 757 note 30.

2 As to the meaning of 'health service body' see PARA 749 note 2.

3 The High Court and the county courts have jurisdiction for the purposes of the Audit Commission Act 1998 s 17: s 17(6).

4 Audit Commission Act 1998 s 17(1) (amended by the Local Government Act 2000 ss 90(1), (2)(a), 107, Sch 6).

5 Audit Commission Act 1998 s 17(2) (amended by the Local Government Act 2000 ss 90(1), (2)(b), 107, Sch 6).

6 Ie under the Audit Commission Act 1998 s 16(1)(a): see PARA 771.

7 Audit Commission Act 1998 s 17(4)(a).

8 Audit Commission Act 1998 s 17(4)(b).

9 Audit Commission Act 1998 s 17(4).

10 Audit Commission Act 1998 s 17(5) (amended by the Local Government Act 2000 ss 90(1), (2)(c), 107, Sch 6).

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773. Advisory notices.

The auditor¹ for the time being of the accounts of a body subject to audit² other than a health service body³ may issue a notice under these provisions (an 'advisory notice'⁴) if he has reason to believe that the body or an officer of the body:

- 824 (1) is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful⁵;
- 825 (2) is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency⁶; or
- 826 (3) is about to enter an item of account, the entry of which is unlawful⁷.

Where two or more auditors are appointed in relation to the accounts of any body the power to issue an advisory notice may be exercised by the auditors acting jointly or by such one of them as they may determine⁸.

A copy of an advisory notice:

- 827 (a) must be served on the body to which, or to an officer of which, it is addressed⁹;
- 828 (b) in the case of a notice addressed to an officer, must also be served on him¹⁰; and
- 829 (c) may be served on such other person or persons as the auditor considers appropriate¹¹.

An advisory notice may at any time be withdrawn by the person who is for the time being the auditor in relation to the accounts of the body to which, or to an officer of which, the notice was addressed, and the auditor must give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served¹².

For these purposes, the actions of a committee or sub-committee of a body, or any other person (other than an officer) authorised to act on behalf of the body, are to be treated as the actions of the body itself¹³.

1 As to the meaning of 'auditor' see PARA 757 note 30.

2 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

3 As to the meaning of 'health service body' see PARA 749 note 2. If the auditor for the time being of the accounts of a health service body has reason to believe that the body or an officer of the body: (1) is about to

make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful; or (2) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency, then he must refer the matter forthwith to the Secretary of State: Audit Commission Act 1998 s 19. As to the Secretary of State see PARA 96.

4 An advisory notice is a notice which:

- 94 (1) is addressed to the body or officer concerned (Audit Commission Act 1998 s 19A(3)(a) (s 19A added by the Local Government Act 2000 s 91(1));
- 95 (2) specifies the paragraph of the Audit Commission Act 1998 s 19A(1) which is relevant and the decision, course of action or item of account to which the notice relates (s 19A(3)(b) (as so added));
- 96 (3) specifies that the notice will take effect on the day a copy of the notice is served on the person to whom it is addressed (s 19A(3)(c) (as so added)); and
- 97 (4) requires the body or officer before making or implementing the decision, taking or continuing to take the course of action or entering the item of account (as the case may be), to give the person who is for the time being the auditor of the accounts of the body not less than the specified number of days' notice in writing of the intention of the body or officer to do that thing (s 19A(3)(d) (as so added)).

In head (4) above the reference to the specified number is to such number not exceeding 21 as is specified in the notice: s 19A(3) (as so added).

5 Audit Commission Act 1998 s 19A(1)(a) (as added: see note 4).

6 Audit Commission Act 1998 s 19A(1)(b) (as added: see note 4).

7 Audit Commission Act 1998 s 19A(1)(c) (as added: see note 4).

8 Audit Commission Act 1998 s 19A(4)(a) (as added: see note 4). In relation to such a notice, references in s 19A(5) and s 19A(6) (see the text and notes 9-11) to the auditor are references to the auditor or auditors by whom the notice is issued: s 19A(4)(b) (as so added).

9 Audit Commission Act 1998 s 19A(5)(a) (as added: see note 4).

10 Audit Commission Act 1998 s 19A(5)(b) (as added: see note 4). Where s 19A requires any document to be served on an officer of a body, it must be served on him by addressing it to him and delivering it to him or leaving it at, or sending it by post to, the office at which he is employed: s 19A(7) (as so added).

The auditor must serve a statement of his reasons for the belief referred to in s 19A(1) on the body concerned, and on any officer on whom a copy of the notice was served under s 19A(5)(b), before the end of the period of seven days beginning on the day on which a copy of the notice was served on the person to whom it is addressed: s 19A(6) (as so added).

11 Audit Commission Act 1998 s 19A(5)(c) (as added: see note 4).

12 Audit Commission Act 1998 s 19A(8) (as added: see note 4). The reference in the text to a copy of the advisory notice is a reference to a copy served under s 19A(5): see the text and notes 9-11.

13 Audit Commission Act 1998 s 19A(2) (as added: see note 4).

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774. Effect of an advisory notice.

While an advisory notice¹ has effect, it is not lawful for the body concerned² or any officer of that body:

- 830 (1) where the notice relates to a decision, to make or implement the decision³;
- 831 (2) where the notice relates to a course of action, to take or continue to take the
course of action⁴; or
- 832 (3) where the notice relates to an item of account, to enter the item of account⁵,

unless and until the following conditions are satisfied⁶. The conditions are:

- 833 (a) that the body has considered, in the light of the advisory notice and the
statement of reasons for belief⁷, the consequences of doing the thing mentioned in
whichever of heads (1) to (3) above is relevant⁸;
- 834 (b) that the body or officer has given the person who is for the time being the
auditor⁹ of the accounts of the body the period of notice in writing required¹⁰ by the
advisory notice¹¹; and
- 835 (c) that that period has expired¹².

An advisory notice takes effect on the day on which a copy of the notice is served on the person to whom it is addressed, and ceases to have effect: (i) where a statement of reasons is not served¹³, at the end of the specified period¹⁴; or (ii) when it is withdrawn¹⁵.

Where, before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land and, before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition, the existence of the advisory notice does not prejudice any remedy in damages which may be available to any person by reason of the body's failure to complete the contract¹⁶.

No action lies against an auditor in respect of loss or damage alleged to have been caused by reason of the issue of an advisory notice which was issued in good faith¹⁷.

1 As to the meaning of 'advisory notice' see PARA 773 note 4.

2 In the Audit Commission Act 1998 s 19B, the 'body concerned', in relation to an advisory notice, means the body to which, or to any officer of which, the notice is addressed: s 19B(5) (s 19B added by the Local Government Act 2000 s 91(1)).

For the purposes of the Audit Commission Act 1998 s 19B, the actions of a committee or sub-committee of a body, or any other person (other than an officer) authorised to act on behalf of the body, are to be treated as the actions of the body itself: see s 19A(2); and PARA 773.

3 Audit Commission Act 1998 s 19B(1)(a) (as added: see note 2).

4 Audit Commission Act 1998 s 19B(1)(b) (as added: see note 2).

5 Audit Commission Act 1998 s 19B(1)(c) (as added: see note 2).

6 Audit Commission Act 1998 s 19B(1) (as added: see note 2).

7 Ie under the Audit Commission Act 1998 s 19A(6): see PARA 773.

8 Audit Commission Act 1998 s 19B(2)(a) (as added: see note 2).

9 As to the meaning of 'auditor' see PARA 757 note 30. Any expenses reasonably incurred by an auditor in or in connection with the issue of an advisory notice are recoverable by him from the body concerned: Audit Commission Act 1998 s 19B(4) (as added: see note 2).

10 Ie under the Audit Commission Act 1998 s 19A(3)(d): see PARA 773.

11 Audit Commission Act 1998 s 19B(2)(b) (as added: see note 2).

- 12 Audit Commission Act 1998 s 19B(2)(c) (as added: see note 2).
- 13 le in accordance with the Audit Commission Act 1998 s 19A(6): see PARA 773.
- 14 Audit Commission Act 1998 s 19B(3)(a) (as added: see note 2). The reference in the text to the specified period is a reference to the period specified in s 19A(6): see PARA 773.
- 15 Audit Commission Act 1998 s 19B(3)(b) (as added: see note 2). The reference in the text to withdrawal is a reference to withdrawal under s 19A(8): see PARA 773.
- 16 Audit Commission Act 1998 s 19C(1) (s 19C added by the Local Government Act 2000 s 91(1)).
- 17 Audit Commission Act 1998 s 19C(2) (as added: see note 16).

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775. Power of auditor to apply for judicial review.

The auditor¹ appointed in relation to the accounts of a body other than a health service body² may make an application for judicial review with respect to any decision of that body, or any failure by that body to act, which it is reasonable to believe would have an effect on the accounts of that body³. The existence of the powers conferred on an auditor under the Audit Commission Act 1998 is not a ground for refusing such an application (or an application for permission to make such an application)⁴. On an application for judicial review under these provisions, the court may make such order as it thinks fit for the payment, by the body to whose decision the application relates, of expenses incurred by the auditor in connection with the application⁵.

1 As to the meaning of 'auditor' see PARA 757 note 30.

2 As to the meaning of 'health service body' see PARA 749 note 2.

3 Audit Commission Act 1998 s 24(1). This is subject to the provisions of the Supreme Court Act 1981 s 31(3), which stipulates that there should be no application for judicial review without permission: see **JUDICIAL REVIEW** vol 61 (2010) PARA 656. As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. As from a day to be appointed the Supreme Court Act 1981 is renamed the Senior Courts Act 1981 by the Constitutional Reform Act 2005 s 59(5), Sch 11, Pt 1, para 1. At the date at which this volume states the law no such day had been appointed.

4 Audit Commission Act 1998 s 24(2).

5 Audit Commission Act 1998 s 24(3).

UPDATE

775 Power of auditor to apply for judicial review

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

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Commission/B. ACCOUNTS AND AUDIT OF PUBLIC BODIES/(E) Miscellaneous/776.
Extraordinary audit.

(E) MISCELLANEOUS

776. Extraordinary audit.

The Audit Commission¹ may direct an auditor² or auditors appointed by it to hold an extraordinary audit³ of the accounts of a body subject to audit⁴:

- 836 (1) if it appears to the Commission to be desirable to do so in consequence of a report made under the Audit Commission Act 1998 by an auditor or for any other reason⁵; or
- 837 (2) where the accounts are not those of a health service body, if an application for such an audit is made by a local government elector⁶ for the area of the body in question⁷.

If it appears to the Secretary of State⁸ that it is desirable in the public interest that there should be an extraordinary audit of the accounts of a body subject to audit he may require the Commission to direct such an audit by an auditor or auditors appointed by it⁹.

An extraordinary audit may be held after three clear days' notice in writing to be given to the body whose accounts are to be audited (or, if it is a parish meeting¹⁰, to be given to its chairman)¹¹.

The expenditure incurred in holding an extraordinary audit of the accounts of any body must be defrayed in the first instance by the Commission but may be recovered by the Commission, if it thinks fit, in whole or part from the body concerned¹².

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 The following provisions apply to an extraordinary audit under the Audit Commission Act 1998 s 25 as they apply to an ordinary audit:

98 (1) in relation to the accounts of a body other than a health service body, s 3 (see PARA 758), s 5 (see PARA 760), s 6 (see PARA 761), ss 8-13 (see PARAS 763-768), ss 16-18 (see PARAS 771-772) (s 25(3)(a)); and

99 (2) in relation to the accounts of a health service body, s 3 (see PARA 758), s 5 (see PARA 760), s 6 (see PARA 761), ss 8-10 (see PARAS 763, 766) (s 25(3)(b)).

As to the meaning of 'health service body' see PARA 749 note 2.

4 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

5 Audit Commission Act 1998 s 25(1)(a).

6 As to the meaning of 'local government elector' see PARA 127 note 2; definition applied by virtue of the Audit Commission Act 1998 s 53(2). See further PARA 769 note 1.

7 Audit Commission Act 1998 s 25(1)(b).

8 As to the Secretary of State see PARA 96.

9 Audit Commission Act 1998 s 25(2).

10 As to parish meetings see PARA 34.

11 Audit Commission Act 1998 s 25(4).

12 Audit Commission Act 1998 s 25(5).

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777. Audit of accounts of officers.

Where an officer of a body subject to audit¹ receives money or other property on behalf of that body, or for which he ought to account to that body, the accounts of the officer must be audited by the auditor² of the accounts of that body³.

1 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 Audit Commission Act 1998 s 26(1). The following provisions apply with the necessary modifications to the accounts and audit:

100 (1) in the case of an officer of a health service body, s 2(1) (see PARA 757), ss 5-10 (see PARAS 760-763, 766), s 25 (see PARA 776) (s 26(2)(a));

101 (2) in any other case, s 2(1) (see PARA 757), ss 5-10 (see PARAS 760-763, 766), ss 13-18 (see PARAS 764, 769-772), s 25 (see PARA 776), s 27 (see PARA **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628) (s 26(2)(b)).

As to the meaning of 'health service body' see PARA 749 note 2.

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778. Agreed audit of accounts.

The Audit Commission¹ may, with the consent of the Secretary of State² and by agreement with the body concerned, appoint an auditor³ to audit of the accounts of any body which⁴:

838 (1) appears to the Secretary of State to be connected with local government or the national health service⁵; and

839 (2) is not a body subject to audit⁶, a local government body in Wales⁷, or a Welsh NHS body⁸.

Such an audit must be carried out in such manner as the Commission, the auditor, and the body concerned may agree⁹. The Commission must charge the body such fees for services provided under these provisions as will cover the full cost of providing them¹⁰.

If the Secretary of State thinks fit he may notify any person of, or publish in any manner, a consent that he has given for these purposes, and any matter related to such a consent¹¹.

- 1 As to the establishment of the Audit Commission see PARA 744.
- 2 Consent for these purposes may be given in respect of any particular body or description of body: Audit Commission Act 1998 s 29(5) (added by the Local Government and Public Involvement in Health Act 2007 s 163). As to the Secretary of State see PARA 96. See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 1; and PARA 97. See also PARA 796 et seq.
- 3 An auditor so appointed may be an officer of the Commission, an individual who is not an officer of the Commission, or a firm of individuals who are not officers of the Commission: Audit Commission Act 1998 s 29(1A) (added by the Local Government and Public Involvement in Health Act 2007 s 162(1), (3)). As to the meaning of 'auditor' see PARA 757 note 30.
- 4 Audit Commission Act 1998 s 29(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 162(1), (2)).
- 5 Audit Commission Act 1998 s 29(1)(a). As to the national health service see **HEALTH SERVICES**.
- 6 As to the meaning of 'body subject to audit' see PARA 745 note 5.
- 7 As to the meaning of 'local government body in Wales' see PARA 757 note 1.
- 8 Audit Commission Act 1998 s 29(1)(b) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 22). As to the meaning of 'Welsh NHS body' see PARA 757 note 1. As to the bodies that are subject to audit see PARA 757.
- 9 Audit Commission Act 1998 s 29(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 162(1), (4)). References in the Audit Commission Act 1998 Pt II (ss 2-32) or Pt III (ss 33-47) to an audit carried out under the Audit Commission Act 1998 do not include an audit carried out under s 29: see s 29(2). Section 29(2) is without prejudice to any other statutory provisions which apply to an audit under s 29: s 29(3). As to the meaning of 'statutory provision' see PARA 760 note 6.
- 10 Audit Commission Act 1998 s 29(4).
- 11 Audit Commission Act 1998 s 29(6) (added by the Local Government and Public Involvement in Health Act 2007 s 163).

UPDATE

778 Agreed audit of accounts

NOTE 3--Audit Commission Act 1998 s 29(1A) amended: SI 2009/1941.

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779. Certification of claims, returns, etc.

The Audit Commission¹ must, if so required by the body concerned, make arrangements:

- 840 (1) for certifying claims and returns in respect of grants or subsidies made or paid by any Minister of the Crown or public authority² to any body subject to audit³;

- 841 (2) for certifying any account submitted by any such body to any such minister with a view to obtaining payment under a contract between that body and the minister⁴;
- 842 (3) for certifying the body's calculation of the amount of its non-domestic rating contribution for a financial year⁵, and for certifying the amount calculated⁶; or
- 843 (4) for certifying any return by the body which, by or under any enactment, is required or authorised to be certified by the body's auditor⁷ or under arrangements made by the Commission⁸.

The Commission must charge the body concerned such fees for services provided under these provisions as will cover the full cost of providing them⁹.

1 As to the establishment of the Audit Commission see PARA 744.

2 For the purposes of the Audit Commission Act 1998 s 28(1)(a), 'public authority' means a body established by or under the Treaties or by or under any enactment: s 28(1). As to the Treaties see the European Communities Act 1972 s 1(2); the Interpretation Act 1978 s 5, Sch 1; and **EUROPEAN COMMUNITIES**.

3 Audit Commission Act 1998 s 28(1)(a). As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

4 Audit Commission Act 1998 s 28(1)(b).

5 The calculation referred to in the text is the calculation under the Local Government Finance Act 1988 s 60, Sch 8 para 5(6)(a). As to non-domestic rating contributions see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 1 et seq.

6 Audit Commission Act 1998 s 28(1)(c).

7 As to the meaning of 'auditor' see PARA 757 note 30.

8 Audit Commission Act 1998 s 28(1)(d).

9 Audit Commission Act 1998 s 28(2).

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C. STUDIES, PERFORMANCE STANDARDS AND OTHER FUNCTIONS

(A) STUDIES AND RELATED FUNCTIONS

780. Studies for improving economy, efficiency, financial management, etc.

The Audit Commission¹ must undertake or promote comparative and other studies designed to enable it to make recommendations:

- 844 (1) for improving economy, efficiency and effectiveness in the exercise of the functions of best value authorities² which are bodies subject to audit³ and the provision of services provided by other bodies subject to audit and by local government bodies in Wales⁴; and
- 845 (2) for improving the financial or other management of bodies subject to audit and local government bodies in Wales⁵.

In undertaking or promoting studies⁶ relating to a health service body⁷ (services of which are excluded from studies under the Audit Commission Act 1998⁸) the Commission may take into account the implementation by the body of any particular statutory provision⁹ or provisions, and any directions or guidance given by the Secretary of State¹⁰ (whether pursuant to any such provision or otherwise); but this does not entitle the Commission to question the merits of the policy objectives of the Secretary of State¹¹.

The Commission may undertake or promote other studies relating to the provision of services by bodies subject to audit and by local government bodies in Wales¹².

Before undertaking or promoting any study under these provisions, the Commission must¹³:

- 846 (a) consult the Secretary of State¹⁴;
- 847 (b) consult such associations of best value authorities which are bodies subject to audit, other bodies subject to audit and local government bodies in Wales as appear to it to be appropriate¹⁵;
- 848 (c) consult such associations of employees as appear to it to be appropriate¹⁶; and
- 849 (d) in the case of any health service bodies, also consult the Comptroller and Auditor General and the Care Quality Commission¹⁷;
- 850 (e) in the case of a study relating to a local government body in Wales, also consult the Welsh Ministers and the Auditor General for Wales and take into account any relevant work done or being done by the Auditor General for Wales¹⁸;
- 851 (f) in the case of a study which has a connection with certain education functions of local authorities in England susceptible to inspection¹⁹ also consult Her Majesty's Chief Inspector of Education, Children's Services and Skills²⁰;
- 852 (g) in the case of a study which has a connection with a study which has a connection with adult social services²¹, also consult the Care Quality Commission²²;
- 853 (h) in the case of a study which has a connection with Welsh local authority social services²³, also consult the National Assembly for Wales²⁴; and
- 854 (i) in the case of any other study relating to a body in respect of which the Welsh Ministers may exercise functions, consult the Welsh Ministers²⁵.

The Commission may undertake or promote studies under these provisions relating to a local government body in Wales only if the Commission considers it necessary or desirable to do so for the purposes of²⁶:

- 855 (i) a study into the exercise throughout England and Wales of particular functions of all local government bodies or a description of local government body²⁷;
- 856 (ii) a study into the provision throughout England and Wales of particular services provided by all local government bodies or a description of local government body²⁸;
- 857 (iii) a study into the financial or other management throughout England and Wales of all local government bodies or a description of local government body²⁹.

The Commission must publish or otherwise make available its recommendations and the result of any studies under these provisions and, in the case of studies relating to a health service body, must, on request, provide the Comptroller and Auditor General with all material relevant to the studies³⁰.

1 As to the establishment of the Audit Commission see PARA 744.

2 'Best value authority' means a best value authority for the purposes of the Local Government Act 1999 Pt I (ss 1-29) (see PARA 688 et seq): Audit Commission Act 1998 s 53(1) (definition added by the Local Government Act 1999 s 22(3), (6)).

3 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

4 Audit Commission Act 1998 s 33(1)(a) (amended by the Local Government Act 1999 s 22(3), (4)(a); and the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 23(1), (2)). As to the meaning of 'local government body in Wales' see PARA 757 note 1. The Audit Commission Act 1998 s 33(1)(a), (b) (in so far as it relates to management and other financial management), do not apply in relation to any primary care trust, any strategic health authority or any NHS trust (within the meaning of the National Health Service Act 2006) all or most of whose hospitals, establishments and facilities are situated in England: Audit Commission Act 1998 s 33(7), (8) (s 33(7), (8) added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 12(6); s 33(8)(c) amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 187). As to primary care trusts and strategic health authorities see **HEALTH SERVICES** vol 54 (2008) PARA 89 et seq. As to NHS trusts within the meaning of the Health Act 2006 see **HEALTH SERVICES** vol 54 (2008) PARA 155.

5 Audit Commission Act 1998 s 33(1)(b) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 23(1), (3)). See also note 4.

6 le under Audit Commission Act 1998 s 33(1): see the text and notes 1-5.

7 As to the meaning of 'health service body' see PARA 749 note 2.

8 le under the Audit Commission Act 1998 s 34: see PARA 781.

9 As to the meaning of 'statutory provision' see PARA 760 note 6.

10 As to the Secretary of State see PARA 96.

11 Audit Commission Act 1998 s 33(3).

12 Audit Commission Act 1998 s 33(4) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 23(1), (4)). This enables studies to be made besides those studies referred to in s 33(1) (see the text and notes 1-5) and s 34 (see PARA 781). See also note 4.

13 Audit Commission Act 1998 s 33(6) (amended by the Local Government and Public Involvement in Health Act 2007 s 241, Sch 18, Pt 11).

14 Audit Commission Act 1998 s 33(6)(za) (added by the Local Government and Public Involvement in Health Act 2007 s 153(1), (2)(a)).

15 Audit Commission Act 1998 s 33(6)(a) (amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 23(1), (5)).

16 Audit Commission Act 1998 s 33(6)(b).

17 Audit Commission Act 1998 s 33(6)(c) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 12(5); the Local Government and Public Involvement in Health Act 2007 ss 153(1), (2)(b), 241, Sch 18, Pt 11; the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 66(1), (2); and SI 2004/2987). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

18 Audit Commission Act 1998 s 33(6)(ca) (added by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 23(1), (6); amended by the Local Government and Public Involvement in Health Act 2007 s 153(1), (2)(c)). As to the Welsh Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Auditor General for Wales see PARA 796 et seq.

19 le anything which may be inspected under the Education and Inspections Act 2006 Pt 8 Ch 4 (ss 135-142): see **EDUCATION**.

20 Audit Commission Act 1998 s 33(6)(cb) (added by the Education and Inspections Act 2006 s 157, Sch 14 paras 26, 27). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION** vol 15(1) (2006 Reissue) PARA 196.

21 le within the meaning of the Health and Social Care Act 2008 Pt 1 (ss 1-97).

22 Audit Commission Act 1998 s 33(6)(d) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), (5); substituted by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 66(1), (3)).

23 le within the meaning of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (ss 41-149): see **SOCIAL SERVICES AND COMMUNITY CARE**.

24 Audit Commission Act 1998 s 33(6)(e) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), (5); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 66(1), (4)).

25 Audit Commission Act 1998 s 33(6)(f) (added by the Local Government and Public Involvement in Health Act 2007 s 153(1), (2)(d)).

26 Audit Commission Act 1998 s 33(6A) (added by the Public Audit (Wales) Act 2004 Sch 2 para 23(7)).

27 Audit Commission Act 1998 s 33(6A)(a) (as added: see note 26). As to the meaning of 'local government body' see PARA 755 note 5.

28 Audit Commission Act 1998 s 33(6A)(b) (as added: see note 26).

29 Audit Commission Act 1998 s 33(6A)(c) (as added: see note 26).

30 Audit Commission Act 1998 s 33(5). In relation to a health service body in Wales specified in the Government of Wales Act 1998 s 144, Sch 17, Pt II, the function of the Comptroller and Auditor General under the Audit Commission Act 1998 s 33(5), (6)(c) is exercisable also by the Auditor General for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 97.

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781. Reports on impact of statutory provisions, etc.

The Audit Commission¹ must undertake or promote studies² designed to enable it to prepare reports as to the impact:

- 858 (1) of the operation of any particular statutory provision³ or provisions⁴; or
- 859 (2) of any directions or guidance given by a Minister of the Crown (whether pursuant to any such provision or otherwise)⁵,

on economy, efficiency and effectiveness in the provision of local authority⁶ services by bodies subject to audit⁷ and local government bodies in Wales and of other services provided by bodies subject to audit other than health service bodies⁸ and by local government bodies in Wales, or on the financial management of bodies subject to audit and local government bodies in Wales⁹. The Commission must publish or otherwise make available its report of the results of any such study, and must send a copy of any such report to the Comptroller and Auditor General¹⁰. Where the Comptroller and Auditor General has received a copy of any such report he may require the Commission to provide him with any information obtained by it in connection with the preparation of the report, and for that purpose the Commission must permit any person authorised by him to inspect and make copies of any documents containing such information¹¹. No information may be required by the Comptroller and Auditor General under these provisions in respect of any particular body¹². The Comptroller and Auditor General must from time to time lay before the House of Commons a report of any matters which, in his opinion, arise out of studies of the Commission under these provisions and ought to be drawn to the attention of that House¹³.

Before undertaking or promoting any study under these provisions the Commission must consult:

- 860 (a) the Comptroller and Auditor General¹⁴;
- 861 (b) the Secretary of State¹⁵;
- 862 (c) in the case of a study which has a connection with certain education functions of an English local authority susceptible to inspection¹⁶, Her Majesty's Chief Inspector of Education, Children's Services and Skills¹⁷;
- 863 (d) in the case of a study which has a connection with adult social services¹⁸, the Care Quality Commission¹⁹;
- 864 (e) in the case of a study which has a connection with any Welsh local authority social service²⁰, the National Assembly for Wales²¹;
- 865 (f) such associations of local authorities or other bodies subject to audit as appear to it to be concerned²²;
- 866 (g) such associations of employees as appear to it to be appropriate²³;
- 867 (h) in the case of a study relating to a local government body in Wales, the Welsh Ministers and the Auditor General for Wales and take account of any relevant work done or being done by the Auditor General for Wales²⁴.

1 As to the establishment of the Audit Commission see PARA 744.

2 In addition to the studies referred to in the Audit Commission Act 1998 s 33(1): see PARA 780. The Commission may undertake or promote studies under the Audit Commission Act 1998 s 34 relating to a local government body in Wales only if the Commission considers it necessary or desirable to do so for the purposes of: (1) a study into the impact of anything mentioned in head (1) or (2) in the text on economy, efficiency and effectiveness in the provision of local authority services throughout England and Wales by all local government bodies or a description of local government body; (2) a study into the impact of anything mentioned in head (1) or (2) in the text on economy, efficiency and effectiveness in the provision of other services throughout England and Wales by all local government bodies or a description of local government body; (3) a study into the impact of anything mentioned in head (1) or (2) in the text on the financial management throughout England and Wales of all local government bodies or a description of local government body: s 34(6A) (added by the Public Audit (Wales) Act 2004 Sch 2 para 24(4)). As to the meaning of 'local government body in Wales' see PARA 757 note 1; and as to the meaning of 'local government body' see PARA 755 note 5.

3 As to the meaning of 'statutory provision' see PARA 760 note 6.

4 Audit Commission Act 1998 s 34(1)(a).

5 Audit Commission Act 1998 s 34(1)(b).

6 As to the meaning of 'local authority' see PARA 23.

7 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

8 As to the meaning of 'health service body' see PARA 749 note 2.

9 Audit Commission Act 1998 s 34(1) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 23(1), (2)).

10 Audit Commission Act 1998 s 34(2). In relation to reports prepared under the Audit Commission Act 1998 s 34(1) on the provision of services in Wales or the financial management of a body exercising functions in Wales, the provisions of s 34(2)-(6) have effect as if references to the Comptroller and Auditor General included a reference to the Auditor General for Wales but so that the provision under s 34(5) for laying a report before the House of Commons is, in relation to the Auditor General for Wales, a provision for laying a report before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 97. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726; and as to the Auditor General for Wales see PARA 796 et seq.

11 Audit Commission Act 1998 s 34(3).

12 Audit Commission Act 1998 s 34(4).

13 Audit Commission Act 1998 s 34(5).

14 Audit Commission Act 1998 s 34(6)(a).

15 Audit Commission Act 1998 s 34(6)(b) (substituted by the Local Government and Public Involvement in Health Act 2007 s 153(1), (3)(a)).

16 Ie anything which may be inspected under the Education and Inspections Act 2006 Pt 8, Ch 4 (ss 135-142): see **EDUCATION**.

17 Audit Commission Act 1998 s 34(6)(bza) (added by the Education and Inspections Act s 157, Sch 14 paras 26, 28). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION** vol 15(1) (2006 Reissue) PARA 196.

18 Ie within the meaning of the Health and Social Care Act 2008 Pt 1 (ss 1-97): see **SOCIAL SERVICES AND COMMUNITY CARE**.

19 Audit Commission Act 1998 s 34(6)(ba) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), (7); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 67(1), (2)).

20 Ie within the meaning of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (ss 41-149): see **SOCIAL SERVICES AND COMMUNITY CARE**.

21 Audit Commission Act 1998 s 34(6)(bb) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), (7); and the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 67(1), (3)). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

22 Audit Commission Act 1998 s 34(6)(c).

23 Audit Commission Act 1998 s 34(6)(d).

24 Audit Commission Act 1998 s 34(6)(da) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 24(1), (3); amended by the Local Government and Public Involvement in Health Act 2007 s 153(1), (3)(b)). As to the Welsh Ministers see PARA 97.

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782. Studies at request of educational bodies.

The Audit Commission¹ may promote or undertake studies designed to improve economy, efficiency and effectiveness in the management or operations of the following educational bodies²:

- 868 (1) a Higher Education Funding Council for England, if requested to do so by the council³;
- 869 (2) the governing body of an institution in England within the higher education sector if requested to do so by the governing body or the higher education funding council for England⁴;
- 870 (3) the Training and Development Agency for Schools, if requested to do so by the agency⁵;
- 871 (4) a training provider⁶ receiving financial support from the Training and Development Agency for Schools⁷, except where that financial support is wholly derived from grants made to the agency by the National Assembly for Wales, if requested to do so by the training provider or the Agency⁸;
- 872 (5) the Learning and Skills Council for England, if requested to do so by the council⁹;

- 873 (6) the governing body of an institution in England within the further education sector, if requested to do so by the governing body, or the Learning and Skills Council for England¹⁰.

The Commission may, at the request of a higher education corporation or further education corporation in England¹¹:

- 874 (a) advise the corporation in connection with the appointment of persons to audit its accounts¹²; and
 875 (b) arrange for the corporation's accounts for any financial year¹³ to be audited by such of the Commission's officers as the corporation may appoint¹⁴.

The Commission must charge the body at whose request any services are provided under these provisions such fees as will cover the full cost of providing them¹⁵.

1 As to the establishment of the Audit Commission see **PARA 744**.

2 See the Audit Commission Act 1998 s 36(1). The provisions of s 36 must be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include a reference to the Audit Commission Act 1998 s 36: s 36(6). As to educational bodies generally see **EDUCATION**.

3 Audit Commission Act 1998 s 36(1), Table (entry amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 25(1), (2)(a)). The Commission may, at the request of the Higher Education Funding Council for England, give the council advice in connection with the discharge of the council's functions under the Education Reform Act 1988 s 124B(2)(b) or Sch 7 para 18(2)(b) (see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 743** et seq): Audit Commission Act 1998 s 36(2) (amended by the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 73(1), (4), Sch 11; and by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 25(1), (3)). As to the Higher Education Funding Council for England see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 733** et seq.

4 Audit Commission Act 1998 s 36(1), Table (entry amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 25(1), (2)(b)).

5 Audit Commission Act 1998 s 36(1), Table (entry substituted by the Education Act 2005 s 98, Sch 14 para 18). As to the Training and Development Agency for Schools see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 784** et seq.

6 Ie within the meaning of the Education Act 2005 Pt 3 (ss 74-100): see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 793** et seq.

7 Ie under the Education Act 2005 s 78: see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 795**.

8 Audit Commission Act 1998 s 36(1), Table (entry substituted by the Education Act 2005 Sch 14 para 18). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Audit Commission Act 1998 s 36(1), Table (entry added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 73(1), (2)). As to the Learning and Skills Council for England see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 1072** et seq.

10 Audit Commission Act 1998 s 36(1), Table (entry amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 25(1), (2)(f)).

11 Audit Commission Act 1998 s 36(3) (amended by the School Standards and Framework Act 1998 s 140, Sch 30 para 225, Sch 31; and the Public Audit (Wales) Act 2004 Sch 2 paras 21, 25(1), (4)). For the purposes of the Audit Commission Act 1998 s 36(3), 'higher education corporation' and 'further education corporation' have the same meanings as in the Further and Higher Education Act 1992 (see **EDUCATION** vol 15(2) (2006 Reissue) **PARAS 672, 674**): Audit Commission Act 1998 s 36(4)(a).

12 Audit Commission Act 1998 s 36(3)(a) (as amended: see note 11). In s 36(3) references to the accounts of a higher education corporation include references to any statement of accounts prepared by the corporation under the Education Reform Act 1988 s 123, Sch 7 para 18 (see **EDUCATION** vol 15(2) (2006 Reissue) **PARA 695**): Audit Commission Act 1998 s 36(4)(b).

- 13 As to the meaning of 'financial year' see PARA 749 note 7.
- 14 Audit Commission Act 1998 s 36(3)(b) (as amended: see note 11).
- 15 Audit Commission Act 1998 s 36(5).

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783. Benefit administration studies for Secretary of State.

The Secretary of State¹ may request the Audit Commission² to conduct or assist the Secretary of State in conducting studies designed to improve economy, efficiency, effectiveness and quality of performance in the discharge by local authorities³ of functions relating to the administration of housing benefit and council tax benefit⁴. If the Commission requires a local authority included in a study⁵, or an officer or member of such an authority, to supply the Commission or an authorised person⁶ with such information as is needed for the purposes of the study, the authority or officer or member must supply the information⁷. If the Commission requires a local authority included in a study to make available for inspection, by the Commission or an authorised person, documents which relate to the authority and are needed for the purposes of the study, the authority must make the documents available⁸.

The Commission must send to the Secretary of State a copy of any report of a study; and the Secretary of State or the Commission may send a copy of a report of a study to any local authority to which the study relates⁹. Any report of a study may be published by the Secretary of State in conjunction with the Commission¹⁰.

- 1 As to the Secretary of State see PARA 96.
- 2 As to the establishment of the Audit Commission see PARA 744.
- 3 As to the meaning of 'local authority' see PARA 23.
- 4 Audit Commission Act 1998 s 38(1). As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq; and as to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371 et seq. The Commission may not conduct, or assist the Secretary of State in conducting, a study unless before it does so the Secretary of State has made arrangements for the payment of such reasonable amount as may be agreed between him and the Commission in respect of the study: s 38(9).

The Secretary of State may not exercise the power conferred by the Audit Commission Act 1998 s 38(1) in relation to a county council, county borough council or community council in Wales: s 38(1A) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 26).
- 5 For the purposes of Audit Commission Act 1998 s 38(3)-(9) (see the text and notes 4-10), 'study' means a study which the Commission is requested to conduct, or assist the Secretary of State in conducting, under s 38(1) (see the text and notes 1-4): s 38(2).
- 6 For the purposes of the Audit Commission Act 1998 s 38(3), (4), 'authorised person' means a person authorised by the Commission for the purposes of s 38: s 38(6).
- 7 Audit Commission Act 1998 s 38(3).
- 8 Audit Commission Act 1998 s 38(4). Any information obtained by virtue of a requirement under s 38(3) or s 38(4) may be disclosed by the Commission to the Secretary of State for the purposes of any of his functions which are connected with housing benefit or council tax benefit: s 38(5).
- 9 Audit Commission Act 1998 s 38(7).

10 Audit Commission Act 1998 s 38(8).

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784. Social security references and reports to Secretary of State.

The Audit Commission¹ or an auditor² may refer to the Secretary of State³ any matter arising from an audit or study under the Audit Commission Act 1998 if it appears that it may be relevant for the purposes of any of the functions of the Secretary of State relating to social security⁴. The Commission may send to the Secretary of State a copy of any report of which a copy is sent to the Commission⁵ and which contains observations on the administration by a local authority⁶ of housing benefit or council tax benefit⁷.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 As to the Secretary of State see PARA 96.

4 Audit Commission Act 1998 s 39(1). See generally **SOCIAL SECURITY AND PENSIONS**.

5 Ie under the Audit Commission Act 1998 s 10(2): see PARA 763.

6 As to the meaning of 'local authority' see PARA 23.

7 Audit Commission Act 1998 s 39(2). As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq; and as to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371 et seq.

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785. Studies relating to registered social landlords.

Until a day to be appointed the following provisions have effect¹. The Housing Corporation² and the Audit Commission³ may agree one or more programmes of comparative studies designed to enable the Commission to make recommendations for improving economy, efficiency and effectiveness of registered social landlords⁴. Where the Housing Corporation and the Commission fail to agree a programme proposed by either of them, either of them may refer the matter to the Secretary of State⁵ who may direct that the programme be carried out either without modifications or with modifications specified in the direction⁶.

Where a programme is agreed or is directed to be carried out, the Commission must ensure that studies giving effect to the programme are carried out by it or on its behalf⁷. It is to be a term of every such programme that the Housing Corporation make good to the Commission the full costs incurred by the Commission in carrying out the programme⁸.

The Commission may, if authorised to do so by the Housing Corporation:

- 876 (1) require a registered social landlord, or any officer or member of a registered
social landlord, to supply such information as the Commission may require for the
purposes of any study under these provisions⁹; and
- 877 (2) require a registered social landlord included in any such study to make
available for inspection such documents as are reasonably required for the
purposes of the study¹⁰.

The Commission may require the information to be supplied, or the documents to be made available, to the Commission or to a person authorised by the Commission for these purposes¹¹. A person who without reasonable excuse fails to comply with a requirement under these provisions commits an offence and is liable on summary conviction to a fine¹². Information obtained by the Commission, or by a person acting on behalf of the Commission, in the course of a study may be disclosed by the Commission to the Housing Corporation¹³.

The Commission must publish reports on the studies carried out under these provisions¹⁴. Before publishing any report the Commission must show a draft of it to the Housing Corporation and must consider whether to revise the draft in the light of any comments made¹⁵.

The Commission may, if it thinks it appropriate to do so, provide advice or assistance to a registered social landlord for the purpose of the exercise by the registered social landlord of its functions¹⁶. Any such advice or assistance may be provided on such terms, including terms as to payment, as the Commission thinks fit¹⁷.

1 As from a day to be appointed the Audit Commission Act 1998 s 40 is substituted by the Housing and Regeneration Act 2008 s 277, Sch 9 paras 20, 21, and the Audit Commission Act 1998 ss 41 and 43 are repealed by the Housing and Regeneration Act 2008 ss 277, 321(1), Sch 9 paras 20, 22, 24, Sch 16. At the date at which this volume states the law no such day had been appointed under s 325(1). See also PARA 787.

2 As to the Housing Corporation see **HOUSING** vol 22 (2006 Reissue) PARA 18 et seq.

3 As to the establishment of the Audit Commission see PARA 744.

4 Audit Commission Act 1998 s 40(1) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 27; and the Local Government and Public Involvement in Health Act 2007 ss 155(1), 241, Sch 18, Pt 11). For the purposes of the Audit Commission Act 1998 ss 40-41C, 'registered social landlord' means a body registered as a social landlord under the Housing Act 1996 Pt I (see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq), other than a body mentioned in s 56(2)(a)-(c) (bodies registered in Wales): Audit Commission Act 1998 s 43 (substituted by the Local Government and Public Involvement in Health Act 2007 s 155(5)). See also note 1.

5 As to the Secretary of State see PARA 96.

6 Audit Commission Act 1998 s 40(2) (amended by the Government of Wales Act 1998 Sch 16 para 99(3)). See also note 1.

7 Audit Commission Act 1998 s 40(3). See note 1.

8 Audit Commission Act 1998 s 40(4) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 para 21, 27(1), (4)). See also note 1.

9 Audit Commission Act 1998 s 41(1)(a) (s 41(1) amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 para 21, 28(1), (2)). See also note 1.

10 Audit Commission Act 1998 s 41(1)(b) (as amended: see note 9). See also note 1.

11 Audit Commission Act 1998 s 41(2). See note 1.

12 Audit Commission Act 1998 s 41(3). See note 1. The penalty is a fine not exceeding level 3 on the standard scale: see s 41(3). As to the standard scale see PARA 105 note 7.

13 Audit Commission Act 1998 s 41(4) (amended by the Public Audit (Wales) Act 2004 Sch 2 para 28(1), (3)). See also note 1.

14 Audit Commission Act 1998 s 40(5). See note 1.

15 Audit Commission Act 1998 s 40(6) (amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 27(1), (5)). See also note 1.

16 Audit Commission Act 1998 s 41C(1) (s 41C added by the Local Government and Public Involvement in Health Act 2007 s 155(3)). As from a day to be appointed the Audit Commission Act 1998 s 41C(1) is amended by the Housing and Regeneration Act 2008 s 277, Sch 9 paras 20, 23(1), (2) to change the references to registered social landlords to registered providers of social housing. At the date at which this volume states the law no such day had been appointed. See PARA 787.

17 Audit Commission Act 1998 s 41C(s) (as added: see note 16).

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786. Inspections of registered social landlords

Until a day to be appointed the following provisions have effect¹. The Audit Commission² may carry out an inspection of the quality of services provided by a registered social landlord³ and a registered social landlord's arrangements for securing continuous improvement in the efficiency, effectiveness and economy with which it provides services⁴. Where the Commission has carried out such an inspection it must issue a report⁵. Such a report must mention any matter that, as a result of the inspection, the Commission considers should be drawn specifically to the attention of the Housing Corporation⁶. The Commission must send a copy of the report to the registered social landlord concerned and to the Housing Corporation, and may publish it and any information in respect of it⁷.

Provision is also made with respect to fees for such inspections⁸.

1 As from a day to be appointed the Audit Commission Act 1998 ss 41A, 41B are repealed by the Housing and Regeneration Act 2008 ss 277, 321(1), Sch 9 paras 20, 22, Sch 16. At the date at which this volume states the law no such day had been appointed under s 325(1). See also PARA 787.

2 As to the establishment of the Audit Commission see PARA 744.

3 Audit Commission Act 1998 s 41A(1)(a) (ss 41A, 41B added by Local Government Act 2003 s 109(1)). See note 1. As to the meaning of 'registered social landlord' see PARA 785 note 4.

4 Audit Commission Act 1998 s 41A(1)(b) (as added: see note 3). See also note 1. The Commission must, when drawing up any programme of inspections under the Audit Commission Act 1998 s 41A(1), consult the Housing Corporation: s 41A(6) (as so added; and amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 29(1), (5)). As to the Housing Corporation see **HOUSING** vol 22 (2006 Reissue) PARA 18 et seq.

The Local Government Act 1999 s 11 (best value inspections under s 10: inspectors' powers and duties, and offences: see PARA 700) applies for the purposes of an inspection of a registered social landlord under the Audit Commission Act 1998 s 41A(1) as it applies for the purposes of an inspection of a best value authority under the Local Government Act 1999 s 10 (see PARA 699): Audit Commission Act 1998 s 41A(5) (as so added). See also note 1.

5 Audit Commission Act 1998 s 41A(2) (as added: see note 3). See also note 1.

6 Audit Commission Act 1998 s 41A(3) (as added (see note 3); and amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 29(1), (3)). See also note 1.

7 Audit Commission Act 1998 s 41A(4) (as added (see note 3); and amended by the Public Audit (Wales) Act 2004 Sch 2 paras 21, 29(1), (4)). See also note 1.

8 See the Audit Commission Act 1998 s 41B (as added (see note 3); and amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 30). See also note 1.

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787. Studies relating to registered providers of social housing.

As from a day to be appointed the following provisions have effect¹. The Audit Commission² may promote or undertake studies designed to improve the economy, efficiency and effectiveness of registered providers of social housing³. The Commission may charge fees for promoting or undertaking such studies at the request of the Regulator of Social Housing⁴.

The Commission must send the Regulator a report on any study under this section⁵, and may publish the report⁶.

The Commission may, if it thinks it appropriate to do so, provide advice or assistance to a registered provider of social housing for the purpose of the exercise by the registered provider of its functions⁷. Any such advice or assistance may be provided on such terms, including terms as to payment, as the Commission thinks fit⁸.

1 As from a day to be appointed the Audit Commission Act 1998 s 40 is substituted by the Housing and Regeneration Act 2008 s 277, Sch 9 paras 20, 21. At the date at which this volume states the law no such day had been appointed under s 325(1).

2 As to the establishment of the Audit Commission see PARA 744.

3 Audit Commission Act 1998 s 40(1) (as prospectively substituted: see note 1). As to registered providers of social housing see **HOUSING**.

4 Audit Commission Act 1998 s 40(2) (as prospectively substituted: see note 1). As to the Regulator of Social Housing see **HOUSING**.

5 Audit Commission Act 1998 s 40(3) (as prospectively substituted: see note 1).

6 Audit Commission Act 1998 s 40(4) (as prospectively substituted: see note 1).

7 Audit Commission Act 1998 s 41C(1) (s 41C added by the Local Government and Public Involvement in Health Act 2007 s 155(3); s 41C(1) prospectively amended by the Housing and Regeneration Act 2008 s 277, Sch 9 paras 20, 23(1), (2)).

8 Audit Commission Act 1998 s 41C(s) (as added: see note 7).

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(B) PERFORMANCE STANDARDS OF PUBLIC BODIES

788. Reports relating to performance of English local authorities.

The Audit Commission¹ may produce comparative and other reports in relation to one or more of the following aspects of the performance of English local authorities² in exercising their functions³:

- 878 (1) the risk that authorities may fail to perform their functions or fail to perform their functions adequately⁴;
- 879 (2) the rate at which authorities' performance is improving⁵;
- 880 (3) the economy, efficiency and effectiveness of authorities' use of resources⁶.

Such a report may relate to:

- 881 (a) all English local authorities⁷;
- 882 (b) any particular English local authority or authorities⁸; or
- 883 (c) particular descriptions of English local authority⁹.

Such a report may also relate to particular functions of authorities¹⁰.

1 As to the establishment of the Audit Commission see PARA 744.

2 For these purposes, 'English local authority' means (1) a county council in England; (2) a district council; (3) a London borough council; (4) the Council of the Isles of Scilly; (5) the Common Council of the City of London in its capacity as a local authority; (6) a metropolitan fire and civil defence authority; (7) the London Fire and Emergency Planning Authority; or (8) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2, or a scheme to which s 4 applies (see **FIRE SERVICES**): Audit Commission Act 1998 s 47A(4) (as added: see note 3).

The Secretary of State may by order amend this definition of 'English local authority' by adding any authority or body which is a best value authority, other than an authority or body which is a Welsh best value authority for the purposes of the Local Government Act 1999 Pt 1 (ss 1-29) (see PARA 688 et seq), or a police authority for a police area in Wales: Audit Commission Act 1998 s 47A(5) (as added: see note 3). As from a day to be appointed s 47A(5) is amended by the Local Government (Wales) Measure 2009 Sch 1 paras 7, 8 to remove the reference to a Welsh best value authority. At the date at which this volume states the law no such day had been appointed. The Secretary of State may by order remove from that definition any authority or body for the time being mentioned in it: s 47A(6) (as added see note 3).

These powers to amend the definition may be exercised to add or remove an authority or body to the extent that it acts in a capacity, or exercises functions, specified in the order: s 47A(7) (as added: see note 3). Before making such an order the Secretary of State must consult the best value authorities concerned or persons appearing to him to represent the best value authorities concerned: s 47A(8) (as added: see note 3). At the date at which this volume states the law no orders had been made under this section.

As to areas and authorities in England see PARA 24 et seq. As to the county council of the Isles of Scilly see PARA 36. As to London Government see PARA 35; and **LONDON GOVERNMENT**. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

3 Audit Commission Act 1998 s 47A(1) (s 47A added by the Local Government and Public Involvement in Health Act 2007 s 157(1)).

4 Audit Commission Act 1998 s 47A(1)(a) (as added: see note 3).

5 Audit Commission Act 1998 s 47A(1)(b) (as added: see note 3).

6 Audit Commission Act 1998 s 47A(1)(c) (as added: see note 3).

7 Audit Commission Act 1998 s 47A(2)(a) (as added: see note 3).

8 Audit Commission Act 1998 s 47A(2)(b) (as added: see note 3).

9 Audit Commission Act 1998 s 47A(2)(c) (as added: see note 3).

10 Audit Commission Act 1998 s 47A(3) (as added: see note 3).

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789. Performance categories.

The Audit Commission¹ must, if the Secretary of State so directs, produce a report on its findings in relation to the performance of English local authorities², or of English local authorities of a description specified in the direction, in exercising their functions³. Such a report must (in particular) categorise each English local authority to which the report relates according to how the authority has performed in exercising its functions⁴. As regards each such report the Audit Commission must send a copy to the Secretary of State⁵, and must publish the report⁶. Where the Secretary of State receives such a report he may by order make provision categorising the English local authorities to which the report relates in accordance with their categorisation in the report⁷.

Certain powers⁸ may (in particular) be exercised for making provision in relation to a description of authority framed by reference to English local authorities that from time to time are, by reason of an order⁹, of a particular category¹⁰.

1 In the Local Government Act 2003 s 99 the 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England: s 99(7) (definition amended by the Local Government and Public Involvement in Health Act 2007 ss 146(3), 241, Sch 9 para 1(1), (2)(s), Sch 18, Pt 9). As to the establishment of the Audit Commission see PARA 744.

2 For these purposes 'English local authority' means (1) a county council in England; (2) a district council; (3) a London borough council; (4) the Common Council of the City of London in its capacity as a local authority; (5) the Council of the Isles of Scilly; (6) a metropolitan fire and civil defence authority; (7) the London Fire and Emergency Planning Authority; or (8) a fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies: Audit Commission Act 1998 s 99(7) (definition amended by the Fire and Rescue Services Act 2004 ss 53(1), 54, Sch 1 paras 99, 102, Sch 2).

As to areas and authorities in England see PARA 24 et seq. As to the county council of the Isles of Scilly see PARA 36. As to London Government see PARA 35; and **LONDON GOVERNMENT**.

3 Local Government Act 2003 s 99(1) (amended (as from 1 August 2009: see SI 2008/3110) by the Local Government and Public Involvement in Health Act 2007 s 158(1), (2)(a)). The Audit Commission may adopt a series of weightings produced by another body in order to assess local authorities: *R (on the application of Ealing London Borough Council) v Audit Commission for Local Authorities and the National Health Service in England and Wales* [2005] EWCA Civ 556, (2005) Times, 26 May, [2005] All ER (D) (May).

A direction by the Secretary of State under the Local Government Act 2003 s 99(1) may specify: (1) the period or periods of performance to be covered by the report; (2) the form of the report; (3) the time by which the report must be produced: s 99(2A) (s 99(2A)-(2C) added the Local Government and Public Involvement in Health Act 2007 s 158(1), (3)). The power to give such a direction includes power to give a direction varying or revoking a previous direction given in exercise of that power: Local Government Act 2003 s 99(2B) (as so added). The Secretary of State must consult the Audit Commission before giving such a direction: s 99(2C) (as so added).

As to the Secretary of State see PARA 96.

4 Local Government Act 2003 s 99(2).

5 Local Government Act 2003 s 99(3)(a).

6 Local Government Act 2003 s 99(3)(b).

7 Local Government Act 2003 s 99(4). In making an order under s 99(4), the Secretary of State may depart from the categorisation in the report only for the purpose of correcting any clerical or typographical error in the

report notified to him by the Audit Commission: s 99(5). An order under s 99(4) may provide for the categorisation for which it provides to have effect from such time as may be specified by the order, and only for such period as may be specified by the order: s 99(6).

As to orders made under s 99(4) see the Local Authorities (Categorisation) (England) Order 2006, SI 2006/3096.

8 le the power to make:

- 102 (1) regulations for the purposes of the Road Traffic Regulation Act 1984 s 55(4)(d)(v) (**ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 818) (Local Government Act 2003 s 100(2)(za) (added by the Traffic Management Act 2004 s 95(4)));
- 103 (2) orders under the Local Government and Housing Act 1989 s 70 (see PARA 404) (Local Government Act 2003 s 100(2)(a));
- 104 (3) orders under the Local Government Act 1999 ss 16 and 19 (see PARAS 499, 695) (Local Government Act 2003 s 100(2)(b) (amended by the Local Government and Public Involvement in Health Act 2007 s 241, Sch 18, Pt 18));
- 105 (4) orders under the Local Government Act 2000 ss 3, 5 and 6 (see PARAS 463-464, 480) (Local Government Act 2003 s 100(2)(c));
- 106 (5) orders under the Legislative and Regulatory Reform Act 2006 s 1 or 2 (Local Government Act 2003 s 100(2)(d) (amended by the Legislative and Regulatory Reform Act 2006 s 31(2))); and
- 107 (6) orders under the Local Government Act 2003 ss 95-97 (see PARAS 502, 503, 507) (s 100(2)(e)).

The Secretary of State may by order amend s 100(2) for the purpose of adding a reference to a power to make provision by order or regulations that is exercisable in relation to all or any English local authorities (whether or not also exercisable in relation to any other person or body): s 100(4). The Secretary of State may by order make provision amending the enactments conferring, or governing the exercise of, a power added by an order under s 100(4) to those mentioned in s 100(2) (s 100(5)), for the following purpose: enabling the power, so far as exercisable in relation to English local authorities, to be exercised in relation to (a) all the English local authorities in relation to which it is exercisable; (b) particular English local authorities; or (c) particular descriptions of English local authority; and differently in relation to different English local authorities or descriptions of English local authority (s 100(6)).

As from a day to be appointed head (2) above is amended by the Local Government and Public Involvement in Health Act 2007 s 216(2), Sch 14 para 5(1), (6) to replace the reference to the Local Government and Housing Act 1989 s 70 with a reference to the Local Government and Public Involvement in Health Act 2007 s 212 (see PARA 406). At the date at which this volume states the law no such day had been appointed.

9 le under Local Government Act 2003 s 99(4): see the text and note 8.

10 Local Government Act 2003 s 100(1).

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(C) DATA MATCHING

790. Power to conduct data matching exercises.

The Audit Commission¹ may conduct data matching exercises² or arrange for them to be conducted on its behalf³, exercisable for the purpose of assisting in the prevention and detection of fraud⁴. That assistance may, but need not, form part of an audit⁵.

A data matching exercise may not be used to identify patterns and trends in an individual's characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future⁶.

The Commission must prepare, and keep under review, a code of practice with respect to data matching exercises⁷, and regard must be had to the code in conducting and participating in any such exercise⁸. The Commission must send a copy of the code, and of any alterations made to the code, to the Secretary of State, who must lay the copy before Parliament⁹, and from time to time publish the code as for the time being in force¹⁰.

1 As to the establishment of the Audit Commission see PARA 744.

2 A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends): Audit Commission Act 1998 s 32A(2) (as added: see note 3). In Pt IIA (ss 32A-32H) (see PARA 791 et seq), reference to a data matching exercise is to an exercise conducted or arranged to be conducted under s 32A: s 32A(6) (as so added).

3 Audit Commission Act 1998 s 32A(1) (ss 32A, 32G, 32H added by the Serious Crime Act 2007 s 73, Sch 7, Pt 1, paras 1, 2).

4 Audit Commission Act 1998 s 32A(3) (as added: see note 3). The Secretary of State may by order amend the Audit Commission Act 1998 Pt IIA (ss 32A-32H) (see PARA 791 et seq) to add any of the following purposes to the purposes for which data matching exercises may be conducted, or to modify the application of that provision in relation to a purpose so added: s 32H(1) (as so added). The purposes which may be added are: (1) to assist in the prevention and detection of crime (other than fraud); (2) to assist in the apprehension and prosecution of offenders; (3) to assist in the recovery of debt owing to public bodies: s 32H(2) (as so added). An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit: s 32H(4) (as so added). At the date at which this volume states the law no such orders had been made under this section. As to the Secretary of State see PARA 96.

5 Audit Commission Act 1998 s 32A(4) (as added: see note 3).

6 Audit Commission Act 1998 s 32A(5) (as added: see note 3).

7 Audit Commission Act 1998 s 32G(1) (as added: see note 3). Before preparing or altering the code, the Commission must consult the bodies mentioned in s 32B(2) (see PARA 791), the Information Commissioner and such other bodies or persons as the Commission thinks fit: s 32G(3) (as so added). As to the Information Commissioner see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 518.

8 Audit Commission Act 1998 s 32G(2) (as added: see note 3).

9 Audit Commission Act 1998 s 32G(4)(a) (as added: see note 3).

10 Audit Commission Act 1998 s 32G(4)(b) (as added: see note 3).

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791. Provision of data and fees.

The Audit Commission¹ may require any body subject to audit², or any English best value authority³ which is not a body subject to audit, and any officer or member of such a body, to provide it or a person acting on its behalf with such data (and in such form) as the Commission or that person may reasonably require for the purpose of conducting data matching exercises⁴. A person who without reasonable excuse fails to comply with such a requirement⁵ is guilty of an offence and liable on summary conviction to a fine⁶.

If the Commission thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to this requirement⁷, the data may be disclosed to the Commission or a person acting on its behalf⁸. Such a disclosure does not breach any obligation of confidence owed by a person making the disclosure, or any other restriction on the disclosure of information (however imposed)⁹.

Data matching exercises may include data provided by a body or person outside England and Wales¹⁰.

The Commission must prescribe a scale or scales of fees in respect of data matching exercises¹¹. A body required¹² to provide data for a data matching exercise must pay to the Commission the fee applicable to that exercise in accordance with the appropriate scale¹³. However, if it appears to the Commission that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the Commission may charge the body a fee which is larger or smaller than the fee generally applicable¹⁴.

In addition to this power, the Commission may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Commission and that body or person¹⁵.

If the Secretary of State considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales of fees prescribed by the Commission and, if he does so, references in this section to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State¹⁶.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

3 'English best value authority' means a best value authority other than: (1) a county council, county borough council or community council in Wales; (2) a national park authority for a national park in Wales; (3) a police authority for a police area in Wales; (4) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 of that Act applies (see **FIRE SERVICES**): Audit Commission Act 1998 s 32B(5) (as added: see note 4). As to best value authorities see PARA 688 et seq. As to areas and authorities in Wales see PARA 37 et seq. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to police authorities established under the Police Act 1996 see s 3 see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

4 See the Audit Commission Act 1998 s 32B(1), (2) (ss 32B, 32C, 32F, 32H added by the Serious Crime Act 2007 s 73, Sch 7, Pt 1, paras 1, 2). As to data matching exercises see PARA 790 note 2.

The Secretary of State may by order amend the Audit Commission Act 1998 Pt IIA (ss 32A-32H) (see PARA 790 et seq): (1) to add a public body to the list of bodies in s 32B(2); (2) to modify the application of this Part in relation to a body so added; (3) to remove a body from that list: s 32H(3) (as so added). An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit: s 32H(4) (as so added). For these purposes 'public body' means a body or person whose functions are functions of a public nature, or include functions of that nature, but, in the latter case, the body or person is a public body to the extent only of those functions: s 32H(5) (as so added).

At the date at which this volume states the law no such orders had been made under this section. As to the Secretary of State see PARA 96.

5 Ie under the Audit Commission Act 1998 s 32B(1)(b): see the text to notes 1-4.

6 See the Audit Commission Act 1998 s 32B(3) (as added: see note 4). A person is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence: s 32B(3)(a), (b) (as so added). Any expenses incurred by the Commission in connection with proceedings for an offence under s 32B(3) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body: s 32B(3) (as so added). As to the standard scale see PARA 105 note 7.

7 Ie not subject to the Audit Commission Act 1998 s 32B: see the text and notes 1-6.

8 Audit Commission Act 1998 s 32C(1) (as added: see note 4).

9 Audit Commission Act 1998 s 32C(2) (as added: see note 4). However, nothing in s 32C authorises a disclosure which contravenes the Data Protection Act 1998 (see **CONFIDENCE AND DATA PROTECTION**), or is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506 et seq): Audit Commission Act 1998 s 32C(3) (as so added). Nor may data be so disclosed if the data comprise or include patient data: s 32C(4) (as so added). 'Patient data' means data relating to an individual which are held for medical purposes (within the meaning of the National Health Service Act 2006 s 251 (see **HEALTH SERVICES** vol 54 (2008) PARA 54)) and from which the individual can be identified: Audit Commission Act 1998 s 32C(5) (as so added). Section 32C does not limit the circumstances in which data may be disclosed apart from this section: s 32C(6) (as so added).

10 Audit Commission Act 1998 s 32C(7) (as added: see note 4).

11 Audit Commission Act 1998 s 32F(1) (as added: see note 4).

12 le required under the Audit Commission Act 1998 s 32B(2): see the text and notes 1-4.

13 Audit Commission Act 1998 s 32F(2) (as added: see note 4). Before prescribing a scale of fees under this section, the Commission must consult: (1) the bodies mentioned in s 32B(2) (see the text and notes 1-4); and (2) such other bodies or persons as the Commission thinks fit: s 32F(4).

14 Audit Commission Act 1998 s 32F(3) (as added: see note 4).

15 Audit Commission Act 1998 s 32F(7) (as added: see note 4).

16 Audit Commission Act 1998 s 32F(5) (as added: see note 4). Before making any regulations under subsection (5), the Secretary of State must consult: (1) the Commission; and (2) such other bodies or persons as he thinks fit: s 32F(6).

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792. Disclosure of results and publication.

Information relating to a particular body¹ or person obtained by or on behalf of the Audit Commission² for the purpose of conducting a data matching exercise³, or the results of any such exercise, may be disclosed by or on behalf of the Commission if the disclosure is⁴:

- 884 (1) for or in connection with a purpose for which the data matching exercise is conducted⁵;
- 885 (2) to a relevant body⁶ (or a related party⁷) for or in connection with a function of that body corresponding or similar to the functions of an auditor with regard to audits and accounts of public bodies⁸, or the functions of the Commission in relation to data matching⁹; or
- 886 (3) in pursuance of a duty imposed by or under a statutory provision¹⁰.

Information so disclosed¹¹ may not be further disclosed except¹²:

- 887 (a) for or in connection with the purpose for which it was disclosed under head (1) or the function for which it was disclosed under head (2)¹³;
- 888 (b) for the investigation or prosecution of an offence¹⁴; or
- 889 (c) in pursuance of a duty imposed by or under a statutory provision¹⁵.

Except as authorised above¹⁶, a person who discloses relevant information is guilty of an offence and liable on conviction to imprisonment, a fine or both¹⁷.

Nothing in the above provisions prevents the Commission from publishing a report on a data matching exercise (including on the results of the exercise)¹⁸. However, the report may not include information relating to a particular body or person if¹⁹:

- 890 (i) the body or person is the subject of any data included in the data matching exercise²⁰;
- 891 (ii) the body or person can be identified from the information²¹; and
- 892 (iii) the information is not otherwise in the public domain²².

A report so published may be published in such manner as the Commission considers appropriate for bringing it to the attention of those members of the public who may be interested²³.

Provision with regard to publication²⁴ does not affect any powers of an auditor where the data matching exercise in question forms part of an audit²⁵.

1 In the Audit Commission Act 1998 s 32D 'body' includes office: s 32D(10) (as added: see note 4).

2 As to the establishment of the Audit Commission see PARA 744.

3 As to data matching exercises see PARA 790 note 2.

4 Audit Commission Act 1998 s 32D(1), (2) (ss 32D, 32E added by the Serious Crime Act 2007 s 73, Sch 7, Pt 1, paras 1, 2). Audit Commission Act 1998 ss 49 (see PARA 794) and 51 (see PARA 795) do not apply to information to which s 32D applies: ss 32D(9), 32E(4) (as so added).

5 Audit Commission Act 1998 s 32D(2)(a) (as added: see note 4). If the data used for a data matching exercise include patient data s 32D(2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body: s 32D(5)(a). As to the meaning of 'patient data' see PARA 791 note 9; definition applied by the Audit Commission Act 1998 s 32D(6)(a) (as so added). 'Relevant NHS body' means: (1) a health service body; (2) a Welsh NHS body; (3) an NHS body as defined in the Community Care and Health (Scotland) Act 2002 s 22(1); (4) a body to which the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265, art 90 applies: Audit Commission Act 1998 s 32D(6)(b) (as so added).

6 The bodies are: (1) the Auditor General for Wales; (2) the Auditor General for Scotland; (3) the Accounts Commission for Scotland; (4) Audit Scotland; (5) the Comptroller and Auditor General for Northern Ireland; and (6) a person designated as a local government auditor under the Local Government (Northern Ireland) Order 2005, SI 2005/1968, art 4: Audit Commission Act 1998 s 32D(3) (as added: see note 4). As to the Auditor General for Wales see PARA 796 et seq.

7 'Related party', in relation to a body mentioned in the Audit Commission s 32D(3), means: (1) a body or person acting on its behalf; (2) a body whose accounts are required to be audited by it or by a person appointed by it; (3) a person appointed by it to audit those accounts: s 32D(4) (as added: see note 4).

8 Ie under the Audit Commission Act 1998 Pt II (ss 2-32): see PARA 744 et seq.

9 Audit Commission Act 1998 s 32D(2)(b) (as added: see note 4). The functions of the Commission referred to in the text are those under the Audit Commission Act 1998 Pt IIA (ss 32A-32G): see PARA 790 et seq.

If the data used for a data matching exercise include patient data s 32D(2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body: s 32D(5)(a). As to the meaning of 'patient data' see PARA 791 note 9; definition applied by the Audit Commission Act 1998 s 32D(6)(a).

10 Audit Commission Act 1998 s 32D(2)(c) (as added: see note 4). As to the meaning of 'statutory provision' see PARA 760 note 6.

11 Ie disclosed under the Audit Commission Act 1998 s 32D(2): see the text and notes 1-10.

12 Audit Commission Act 1998 s 32D(7) (as added: see note 4).

13 Audit Commission Act 1998 s 32D(7)(a) (as added: see note 4).

- 14 Audit Commission Act 1998 s 32D(7)(b) (as added: see note 4). Section 32D(7)(b) applies in so far as the disclosure does not fall within s 32D(7)(a): see the text to note 13.
- 15 Audit Commission Act 1998 s 32D(7)(c) (as added: see note 4).
- 16 Ie under the Audit Commission Act 1998 s 32D(2), (7): see the text and notes 1-15.
- 17 Audit Commission Act 1998 s 32D(8) (as added: see note 4). A person guilty of such an offence is liable on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both (s 32D(8) (a) (as so added)), or on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both (s 32D(8)(b) (as so added)). As to the statutory maximum see PARA 794 note 29.
- 18 Audit Commission Act 1998 s 32E(1) (as added: see note 4).
- 19 Audit Commission Act 1998 s 32E(2) (as added: see note 4).
- 20 Audit Commission Act 1998 s 32E(2)(a) (as added: see note 4).
- 21 Audit Commission Act 1998 s 32E(2)(b) (as added: see note 4).
- 22 Audit Commission Act 1998 s 32E(2)(c) (as added: see note 4).
- 23 Audit Commission Act 1998 s 32E(3) (as added: see note 4).
- 24 Ie under the Audit Commission Act 1998 s 32E.
- 25 Audit Commission Act 1998 s 32E(1) (as added: see note 4). The audit referred to in the text is an audit performed under Pt II (ss 2-32): see PARA 744 et seq.

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D. PROVISION AND PUBLICATION OF INFORMATION

793. Provision of information and documents to the Audit Commission.

The Audit Commission¹ may require any body subject to audit², and any officer or member of such a body³, to provide the Commission or a person authorised by it with all such information as the Commission or that person may reasonably require for the discharge of functions under the Audit Commission Act 1998, including the carrying out of studies⁴.

For the purpose of assisting the Commission to maintain proper standards in the auditing of the accounts of a body subject to audit, the Commission may require that body to make available for inspection by or on behalf of the Commission the accounts concerned⁵, and such other documents relating to the body as might reasonably be required by an auditor for the purposes of the audit⁶.

The Secretary of State⁷ may supply to the Commission any information held by him which relates to housing benefit⁸ or council tax benefit⁹ and which appears to him to be relevant to the exercise of any function of the Commission¹⁰.

1 As to the establishment of the Audit Commission see PARA 744.

2 Audit Commission Act 1998 s 48(1)(a). As to the meaning of 'body subject to audit' see PARA 745 note 5. As to the bodies that are subject to audit see PARA 757.

3 Audit Commission Act 1998 s 48(1)(b). A person who without reasonable excuse fails to comply with a requirement of the Commission under s 48(1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, and to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence: s 48(4). As to the standard scale see PARA 105 note 7. Any expenses incurred by the Commission in connection with proceedings for an offence under s 48(4) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body: s 48(5).

4 Audit Commission Act 1998 s 48(1). The studies referred to in the text are studies carried out under s 33 (see PARA 780) or 34 (see PARA 781). Section 48(1) does not apply to functions under s 36 (see PARA 782) or s 47A (see PARA 788): s 48(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 157(2)).

5 Audit Commission Act 1998 s 48(3)(a).

6 Audit Commission Act 1998 s 48(3)(b).

7 As to the Secretary of State see PARA 96.

8 As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq.

9 As to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371 et seq.

10 Audit Commission Act 1998 s 50.

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794. Restriction on disclosure of information.

No information relating to a particular body or other person obtained by the Audit Commission¹ or an auditor², or by a person acting on behalf of the Commission or an auditor, pursuant to any provision of the Audit Commission Act 1998 or of Part I of the Local Government Act 1999³ or in the course of any audit or study⁴ under any such provision may be disclosed⁵ except:

- 893 (1) with the consent of the body or person to whom the information relates⁶;
- 894 (2) for the purposes of any functions of the Commission⁷ or an auditor under the Audit Commission Act 1998 or under Part I of the Local Government Act 1999⁸;
- 895 (3) to the National Assembly for Wales for the purposes of its NHS health care functions under the Health and Social Care (Community Health and Standards) Act 2003⁹;
- 896 (4) in the case of a health service body¹⁰, for the purposes mentioned in head (2) above or for the purposes of the functions of the Secretary of State¹¹, the Comptroller and Auditor General under the National Health Service Act 2006¹²;
- 897 (5) to Her Majesty's Chief Inspector of Education, Children's Services and Skills for the purposes of his functions with regard to the inspection and review of local authorities under the Education and Inspections Act 2006¹³;
- 898 (6) for the purposes of the functions of the Care Quality Commission under Part 1 of the Health and Social Care Act 2008¹⁴;
- 899 (7) for the purposes of the functions of the Secretary of State relating to social security¹⁵;
- 900 (8) for the purposes of any function of the Auditor General for Wales under the Public Audit (Wales) Act 2004 or (in relation to a health service body) under the Government of Wales Act 1998¹⁶;

- 901 (9) to the Mayor of London, where the information relates to the Greater London Authority or a functional body¹⁷;
- 902 (10) for the purposes of the functions of an ethical standards officer or the Public Services Ombudsman for Wales under Part III of the Local Government Act 2000¹⁸;
- 903 (11) for the purposes of the functions of a monitoring officer under Part III of the Local Government Act 2000, or regulations made under that Part¹⁹;
- 904 (12) for the purposes of any criminal proceedings²⁰.

A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000²¹, may also disclose such information to the Housing Commission²², or in any other circumstances, except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment²³.

An auditor who is not a public authority for the purposes of the Freedom of Information Act 2000²⁴, or a person acting on his behalf, may also disclose such information except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the auditor by or under an enactment²⁵.

A person who is neither an auditor nor a public authority for the purposes of the Freedom of Information Act 2000²⁶, may also disclose such information in accordance with consent given by the Commission or an auditor²⁷.

A person who discloses information in contravention of these provisions is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum²⁸.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 In the Local Government Act 1999 Pt I (ss 1-29): see PARA 688 et seq.

4 References in the Audit Commission Act 1998 s 49(1) to studies do not include studies under s 36 (see PARA 782): see s 49(2).

5 Audit Commission Act 1998 s 49(1) (amended by the Local Government Act 1999 s 22(3), (5)(a)).

6 Audit Commission Act 1998 s 49(1)(a).

7 References in the Audit Commission Act 1998 s 49(1) to functions of the Commission do not include functions under s 36 (see PARA 782): see s 49(2).

8 Audit Commission Act 1998 s 49(1)(b) (amended by the Local Government Act 1999 s 22(3), (5)(b)).

9 Audit Commission Act 1998 s 49(1)(bb) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12(1), 10(a); and amended by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 68(1), (3)). As to the functions of the National Assembly for Wales under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 4 (ss 70-75) see **HEALTH SERVICES**.

10 As to the meaning of 'health service body' see PARA 749 note 2.

11 As to the Secretary of State see PARA 96.

12 Audit Commission Act 1998 s 49(1)(c) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 12 (10)(b); the National Health Service (Consequential Provisions) Act Sch 2006 s 2, Sch 1 paras 186, 188; and the Health and Social Care Act 2008 ss 95, 166, Sch 5, Pt 3, para 68(1), (4), Sch 15, Pt 1).

As to the functions of the Comptroller and Auditor General under the National Health Service Act 2006 see **HEALTH SERVICES**; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. See also the Auditor General for Wales, and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and PARA 97.

13 Audit Commission Act 1998 s 49(1)(ca) (added by the Education and Inspections Act 2006 s 157, Sch 14 paras 26, 30). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills for the purposes of his functions under the Education and Inspections Act 2006 Pt 8 Ch 4 (ss 135-142) see **EDUCATION**.

14 Audit Commission Act 1998 s 49(1)(cb) (added by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 68(1), (5)).

15 Audit Commission Act 1998 s 49(1)(d). As to functions of the Secretary of State relating to social security see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 357.

16 Audit Commission Act 1998 s 49(1)(da) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 21, 33). As to the Auditor General for Wales see PARA 796 et seq.

17 Audit Commission Act 1998 s 49(1)(dd) (added by the Greater London Authority Act 1999 s 133, Sch 8 paras 1, 11). As to the meaning of 'functional body' see PARA 757 note 5. As to the Mayor of London and the Greater London Authority see **LONDON GOVERNMENT**.

18 Audit Commission Act 1998 s 49(1)(de) (substituted by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 para 59). As to the Local Government Act 2000 Pt III (ss 49-83) see PARA 232 et seq. As to the Public Services Ombudsman for Wales see PARA 267.

19 Audit Commission Act 1998 s 49(1)(df) (substituted by the Local Government and Public Involvement in Health Act 2007 s 201(5)). As to the functions of a monitoring officer under the Local Government Act 2000 Pt III (ss 49-83) see PARA 232 et seq.

20 Audit Commission Act 1998 s 49(1)(f).

21 See **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

22 Ie in accordance with the Audit Commission Act 1998 s 41(4): see PARA 785.

23 Audit Commission Act 1998 s 49(2A) (added by the Local Government and Public Involvement in Health Act 2007 s 164(1), (3)). As from a day to be appointed the Audit Commission Act 1998 is amended by the Housing and Regeneration Act 2008 s 277, Sch 9 paras 20, 25 to remove the reference to disclosing such information to the Housing Commission in accordance with the Audit Commission Act 1998 s 41(4) (see PARA 785). At the date at which this volume states the law no such day had been appointed.

24 Ie an auditor who does not fall within the Audit Commission Act 1998 s 49(2A): see the text and notes 22-24.

25 Audit Commission Act 1998 s 49(2B) (added by the Local Government and Public Involvement in Health Act 2007 s 164(1), (3)).

26 Ie an auditor who does not fall within the Audit Commission Act 1998 s 49(2A), (2B): see the text and notes 22-26.

27 Audit Commission Act 1998 s 49(2C) (added by the Local Government and Public Involvement in Health Act 2007 s 164(1), (3)). Consent for these purposes must be obtained in accordance with the following provisions: Audit Commission Act 1998 s 49ZA(1) (s 49ZA added by the Local Government and Public Involvement in Health Act 2007 s 164(1), (5)). A person requesting consent (the 'applicant') must make a request for consent which: (1) is in writing; (2) states the name of the applicant and an address for correspondence; (3) describes the information in relation to which consent is requested; and (4) identifies the person to whom the information will be disclosed: Audit Commission Act 1998 s 49ZA(2) (as so added). Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Commission or an auditor by or under an enactment: s 49ZA(3) (as so added). Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing: s 49ZA(4) (as so added). A refusal (or, where the refusal is oral, the confirmation of the refusal) must contain the reasons for the refusal: s 49ZA(5) (as so added). A person to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received: s 49ZA(6) (as so added). 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321) in any part of the United Kingdom: Audit Commission Act 1998 s 49ZA(7) (as so added).

28 Audit Commission Act 1998 s 49(3) (amended by the Local Government and Public Involvement in Health Act 2007 ss 164(1), (4), 241, Sch 18, Pt 12). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act

1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the meaning of 'prescribed sum' see PARA 532 note 24.

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795. Publication of information by the Audit Commission.

The Audit Commission¹ may publish such information as it thinks fit except where the publication would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Commission or an auditor² by or under an enactment³.

Information must be published in such manner as the Commission considers appropriate for bringing the information to the attention of those members of the public who may be interested⁴.

1 As to the establishment of the Audit Commission see PARA 744.

2 As to the meaning of 'auditor' see PARA 757 note 30.

3 Audit Commission Act 1998 s 51(1) (substituted by the Local Government and Public Involvement in Health Act 2007 s 165).

4 Audit Commission Act 1998 s 51(4).

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(ii) The Auditor General for Wales

A. IN GENERAL

796. The Auditor General for Wales.

The Government of Wales Act 2006 established the office of Auditor General for Wales (Archwilydd Cyffredinol Cymru)¹. The Auditor General is appointed by Her Majesty on the nomination of the National Assembly for Wales². He may appoint staff and secure the provision of services for assisting in the exercise of his functions³, and he may authorise a member of his staff or a person providing services to him to exercise any of his functions⁴.

Any sums payable by the Auditor General in consequence of a breach, in the performance of any of his functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund⁵. The Auditor General may retain certain fees charged by him and grants made to him for use in connection with the exercise of the specified functions, rather than pay it into the Welsh Consolidated Fund⁶. The Auditor General may borrow sums in sterling (by way of overdraft or otherwise) to be applied for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet it⁷.

The Auditor General has a right of access at all reasonable times to every document relating to a relevant person⁸ which appears to him necessary for the purposes of⁹:

- 905 (1) his examination of any auditable accounts¹⁰;
- 906 (2) undertaking economy, efficiency and effectiveness studies¹¹; and
- 907 (3) carrying out, in accordance with any provision, other examinations or studies into the economy, efficiency and effectiveness with which any person has used his resources in discharging his functions¹².

The Auditor General may require a person whom he thinks has specified information¹³:

- 908 (a) to give him any assistance, information and explanation¹⁴;
- 909 (b) to attend before him in person to give the assistance, information or explanation, or to produce a document¹⁵; or
- 910 (c) to provide any facility which he reasonably requires¹⁶.

Where the Welsh Ministers are entitled to appoint the auditor of the accounts of any person other than the Auditor General, they may appoint the Auditor General as that auditor, even if he would not otherwise be eligible to be so appointed¹⁷.

If the Auditor General thinks that it would be in the public interest to bring to the public's attention a matter coming to his notice in the course of an examination or study for which he has audit responsibility, he may prepare a report on that matter¹⁸. If required to do so by a body in respect of which he has audit responsibilities, the Auditor General must make arrangements for the certification of claims, returns or accounts in respect of grants, subsidies and certain other payments made to the body¹⁹.

1 See the Government of Wales Act 2006 s 145(1), (2), Sch 8. The Welsh Ministers must co-operate with the Auditor General where it seems to them appropriate to do so for the efficient and effective discharge of their functions in relation to Welsh NHS bodies: s 145(3). As to the meaning of 'Welsh NHS bodies' see PARA 799 note 2; definition applied by s 145(4). As to the Welsh Ministers see PARA 97.

2 Government of Wales Act 2006 Sch 8 para 1(1). No nomination is to be made until the National Assembly for Wales is satisfied that reasonable consultation has been undertaken with such bodies as appear to the Assembly to represent the interests of local government bodies in Wales: Sch 8 para 1(2). For these purposes a body is a local government body in Wales at any time if at that time it is specified in the Public Audit (Wales) Act 2004 s 12(1) (see PARA 801): see the Government of Wales Act 2006 Sch 8 para 1(3). The validity of any act of a person appointed as Auditor General is not affected by any defect in the person's nomination by the Assembly: Sch 8 para 1(4). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

The office holder is a corporation sole: Sch 8 para 4. The Auditor General holds office until the end of the period for which he was appointed, unless he is removed at his own request, or because of incapacity for medical reasons, or, where the Assembly has resolved by a specified majority, on grounds of misbehaviour: see Sch 8 para 2. The Auditor General is not, in the exercise of any functions, subject to the direction or control of the Assembly or the Welsh Assembly Government: Sch 8 para 3(1). Nor does he hold office under Her Majesty or exercise any functions on behalf of the Crown; but he is taken to be a Crown servant for the purposes of the Official Secrets Act 1989: Government of Wales Act 2006 Sch 8 para 3(2). The application of the seal of the Auditor General is to be authenticated by his signature, or by the signature of any member of his staff authorised by him, and a document purporting to be so executed or signed may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed: Sch 8 para 5. As to the Official Secrets Act 1989 see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 483 et seq.

The Assembly must pay the Auditor General such salary and any such allowances, and make any such payments towards the provision of superannuation benefits for or in respect of the Auditor General, as may be provided for by or under the terms of the Auditor General's appointment: Sch 8 para 6(1). The Assembly must pay to or in respect of a person who has ceased to hold office as Auditor General such amounts (if any) by way of pension or gratuities, or provision for those benefits, as may have been provided for by or under the terms of the Auditor General's appointment: Sch 8 para 6(2).

The Auditor General qualifies for a civil service pension: Superannuation Act 1972 Sch 1 (amended by the Government of Wales Act 2006 Sch 8 para 6(3)). The costs of the pension are met by the Assembly and through

the Welsh Consolidated Fund: Sch 8 para 6(4), (5). As to the Welsh Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

As to expenses and income of the Auditor General see Sch 8 para 11, and as to the audit of his accounts see Sch 8 paras 12-15 (para 14 amended by virtue of SI 2008/948). The accounting officer for the Wales Audit Office is the Auditor General: see the Government of Wales Act 2006 Sch 8 para 16(1). The 'Wales Audit Office' means the Auditor General and the members of his staff: Sch 8 para 16(2). See further Sch 8 para 16(3), (4).

3 See the Government of Wales Act 2006 Sch 8 para 7(1). Staff are appointed on such terms and conditions as the Auditor General may determine, and he must pay staff such remuneration as may be provided for by or under the terms of their appointment: see Sch 8 para 7(2), (3). Staff qualify for civil service pensions: Superannuation Act 1972 Sch 1 (amended by the Government of Wales Act 2006 Sch 8 para 7(4)). The costs of such pensions are met by the Auditor General: see Sch 8 para 7(5). Staff do not hold office under Her Majesty or exercise any functions on behalf of the Crown; but each member of staff is taken to be a Crown servant for the purposes of the Official Secrets Act 1989: Government of Wales Act 2006 Sch 8 para 7(6).

4 See the Government of Wales Act 2006 Sch 8 para 8(1). See further Sch 8 para 8(2)-(5). Any function of the Auditor General may be exercised jointly by the Auditor General and a person providing services to the Auditor General who is authorised by the Auditor General for that purpose: Sch 8 para 8(2). Any provision made under Sch 8 para 8(1) for the exercise of any function does not affect the responsibility of the Auditor General on whose behalf the function is exercised: Sch 8 para 8(3). An authority under Sch 8 para 8(1) to certify or report on accounts (or statements of accounts) which fall to be examined by the Auditor General, and are required to be laid before the Assembly: (1) extends only to accounts (or statements) which the Presiding Officer has certified to the Assembly are accounts (or statements) which the Auditor General is unable to certify, or on which the Auditor General is unable to report, in person; and (2) ceases when the office of Auditor General becomes vacant: Sch 8 para 8(4), (5).

5 See the Government of Wales Act 2006 Sch 8 para 9(1), (2).

6 See the Government of Wales Act 2006 Sch 8 para 9(3)-(5) (para 9(3), (4) amended, and para 9(5) added by the Serious Organised Crime Act 2007 s 73, Sch 7, Pt 2, para 5).

7 Government of Wales Act 2006 Sch 8 para 10.

8 'Relevant person' means: (1) in a case within the Government of Wales Act 2006 Sch 8 para 17(1)(a) relating to any accounts which the Welsh Ministers are directed to prepare under the Government of Wales Act 2006 s 131 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), the Welsh Ministers, the Counsel General and any person to whose financial affairs and transactions the accounts are to relate by virtue of s 131(3); (2) in a case within the Government of Wales Act 2006 Sch 8 para 17(1)(a) relating to any accounts which the Assembly Commission is directed to prepare under s 137 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), the Assembly Commission and any person to whose financial affairs and transactions the accounts are to relate; (3) in a case within the Government of Wales Act 2006 Sch 8 para 17(1)(a) relating to any other auditable accounts, the person by whom the accounts are prepared; and (4) in any other case, a person to whom the study or examination relates: Sch 8 para 17(8). As to the Counsel General and the National Assembly for Wales Commission see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Government of Wales Act 2006 Sch 8 para 17(1). The documents to which the right conferred by Sch 8 para 17(1) applies may include, in particular: (1) a document which is in the possession, or under the control, of a person who has received financial assistance from the relevant person by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate; (2) a document which is in the possession, or under the control, of a person who has supplied goods or services to the relevant person in pursuance of a contract to which the relevant person was a party or has supplied goods or services in pursuance of a relevant sub-contract; and (3) a document of a description specified in an order made by the Welsh Ministers: Sch 8 para 17(2). For the purposes of head (2), a contract is a relevant sub-contract if its performance fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the relevant person in another contract: Sch 8 para 17(6). Before making an order under head (3), the Welsh Ministers must consult the Treasury and the Auditor General: Sch 8 para 17(9).

The Auditor General may, for the purposes of an examination of any auditable accounts, require a relevant person to provide him, at specified times, with accounts of such of the person's transactions as he may specify: Sch 8 para 15(5).

10 Government of Wales Act 2006 Sch 8 para 17(1)(a). 'Auditable accounts' means any accounts or statement of accounts falling to be examined by the Auditor General in accordance with any provision made by or by virtue of any Act: Government of Wales Act 2006 Sch 8 para 17(7).

11 Government of Wales Act 2006 Sch 8 para 17(1)(b). The studies referred to in the text are those under the Government of Wales Act 1998 ss 145A, 145C: see **PARAS 823, 829**.

12 Government of Wales Act 2006 Sch 8 para 17(1)(c).

13 The information which relates to (1) a relevant person; (2) a document to which the Auditor General has a right of access; or (3) a person who possesses or controls such a document: Government of Wales Act 2006 Sch 8 para 17(4).

14 Government of Wales Act 2006 Sch 8 para 17(3)(a).

15 Government of Wales Act 2006 Sch 8 para 17(3)(b).

16 Government of Wales Act 2006 Sch 8 para 17(3)(c).

17 Government of Wales Act 2006 Sch 8 para 18(1). See further Sch 8 para 18(2)-(4).

18 Government of Wales Act 2006 Sch 8 para 19(1). Schedule 8 para 19(1) does not apply to accounts falling to be examined under Sch 8 para 18(3)(a), or where the examination or study is one undertaken at the request of the body or bodies to which it relates: see Sch 8 para 19(2). Such a report must be laid before the Assembly as soon as practicable: see Sch 8 para 19(3).

19 See the Government of Wales Act 2006 Sch 8 para 20. As to further ancillary powers of the Auditor General of Wales, see Sch 8 para 21 (amended by virtue of SI 2008/948). As to orders made under the Government of Wales Act 2006 Sch 8 para 21 see the Government of Wales Act 2006 (Approved European Body of Accountants) Order 2007, SI 2007/2973.

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797. Transfer of functions and property to the Auditor General for Wales.

The Secretary of State¹ may by order provide for any function of the Comptroller and Auditor General², relating to a specified body or office³, to be transferred to, or become a function also, of the Auditor General for Wales⁴.

The Welsh Ministers⁵ may, with the consent of the Auditor General for Wales, by order provide for any of their supervisory functions⁶ in respect of a public body⁷ or a registered social landlord in Wales⁸ to be exercised on their behalf by the Auditor General for Wales, or to be transferred to him⁹.

The Secretary of State may by order make provision¹⁰:

911 (1) for any function of the Comptroller and Auditor General relating to the Environment Agency¹¹ to become a function also of the Auditor General for Wales so far as it relates to any of the Agency's Welsh functions or to any funding provided to the Agency by the Welsh Ministers¹².

912 (2) about reports to the Assembly by the Environment Agency on the Agency's activities in exercise of its Welsh functions (including provision for the giving of directions by the Assembly about such reports)¹³.

If there is transferred to the Welsh Ministers¹⁴ a function of preparing accounts, the Secretary of State may by order provide for the transfer to the Auditor General of any function of the Comptroller and Auditor General in relation to those accounts¹⁵.

Any property, rights and liabilities which are the subject of a transfer scheme¹⁶ are to be transferred to and vested in the Auditor General for Wales in accordance with the scheme¹⁷.

- 1 As to the Secretary of State see PARA 96.
- 2 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 3 le any body specified in the Government of Wales Act 1998 Sch 17 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), and any other body or office whose functions relate exclusively to Wales or an area of Wales (but not the Auditor General for Wales, Her Majesty's Chief Inspector of Education and Training in Wales, the Public Services Ombudsman for Wales, a county council, a county borough council or a community council): s 146(2) (amended by the Learning and Skills Act 2000 s 73(3); and the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 67, Sch 7).
- 4 Government of Wales Act 1998 s 146(1). An order under s 146(1) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments): s 146(3). An Order in Council under the Government of Wales Act 2006 s 58 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) may include any provision that may be included in an order under the Government of Wales Act 1998 s 146(1): s 146(4).
- 5 As to the Welsh Ministers see PARA 97.
- 6 'Supervisory functions' in respect of a public body or a registered social landlord in Wales, means functions of examining, inspecting, reviewing or studying the financial or other management of the public body or registered social landlord or the way in which it discharges any of its functions: Government of Wales Act 1998 s 146A(2) (as so added: see note 9).
- 7 'Public body' means a body exercising functions of a public nature, or a body entirely or substantially funded from public money, and for this purpose, 'body' includes office: Government of Wales Act 1998 s 146A(2) (as so added: see note 9).
- 8 'Registered social landlord in Wales' means a body which is registered as a social landlord under the Housing Act 1996 Pt 1 Ch 1 (ss 1-7) (see **HOUSING** vol 22 (2006 Reissue) PARA 67 et seq) and mentioned in the Housing Act 1996 s 56(2)(a)-(c) (see **HOUSING** vol 22 (2006 Reissue) PARA 55): Government of Wales Act 1998 s 146A(2) (as so added: see note 9).
- 9 Government of Wales Act 1998 s 146A(1) (s 146A added by the Public Audit (Wales) Act 2004 s 1; s 146A(1) amended by the Government of Wales Act 2006 Sch 10 para 50). The Welsh Ministers may direct the Auditor General for Wales to prepare a report on his exercise of functions that are transferred to him under s 146A(1) and to lay such a report before the National Assembly for Wales: see s 146A(3), (4) (as so added (see note 9); s 146A(3) amended by the Government of Wales Act 2006 Sch 10 para 50).
- 10 Government of Wales Act 1998 s 147(1). An order under s 147(1) may contain any appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments): s 147(2). An Order in Council under the Government of Wales Act 2006 s 58 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) may include any provision that may be included in an order under the Government of Wales Act 1998 s 147(1): s 147(3) (amended by the Government of Wales Act 2006, s 160(1), Sch 10, paras 41, 51(1), (3)).
- 11 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 12 Government of Wales Act 1998 s 147(1)(a) (amended by the Government of Wales Act 2006, s 160(1), Sch 10, paras 41, 51(1), (2)).
- 13 Government of Wales Act 1998 s 147(1)(b). References to the Environment Agency's Welsh functions are to its functions so far as exercisable in relation to Wales or to a cross-border body, or an English border area, in relation to which environmental functions of the Welsh Ministers are exercisable; and 'environmental functions of the Assembly' means functions of the Welsh Ministers in a field in which the Environment Agency also has function: s 147(4) (amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 51(1), (4)).
- 14 le under the Government of Wales Act 2006 s 58: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 15 Government of Wales Act 2006 Sch 8 para 18(5). See further Sch 8 para 18(6), (7), (10), (11). The same person may at one time hold the offices of Comptroller and Auditor General and Auditor General for Wales: Exchequer and Audit Departments Act 1866 s 3 (amended by the Government of Wales Act 1998 Sch 12 para 1).
- 16 For this purpose 'a transfer scheme' means a scheme contained in an order made under the Public Audit (Wales) Act 2004 Sch 3 para 1: s 68(2). At the date at which this volume states the law, the following schemes had been made by order under s 68, Sch 3: the Public Audit (Wales) Act 2004 (Transfer of Property, Rights and

Liabilities of the Audit Commission for Local Authorities and the National Health Service in England and Wales) Order 2005, SI 2005/503; and the Public Audit (Wales) Act 2004 (Transfer of Property, Rights and Liabilities of the Comptroller and Auditor General) Order 2005, SI 2005/552.

17 Public Audit (Wales) Act 2004 s 68(1). Provision is made with regard to schemes for the transfer of property, rights and liabilities: see s 68(3), Sch 3.

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798. Provision of information to Audit Commission.

The Auditor General for Wales¹ must, on request, provide the Audit Commission² with any information it may reasonably require for the purpose of making comparisons, in the discharge of certain of its functions³, between local government bodies in Wales⁴ and other local government bodies⁵.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'Audit Commission' see PARA 823 note 17. As to the Audit Commission see PARA 744 et seq.

3 I.e. under the Audit Commission Act 1998 ss 33, 34: see PARAS 780, 781.

4 As to the meaning of 'local government body in Wales' see PARA 801.

5 Public Audit (Wales) Act 2004 s 57(1). For these purposes 'local government body' has the meaning given in the Audit Commission Act 1998 s 53(1): see PARA 755 note 5. As to the Audit Commission's duty to provide information to the Auditor General see PARA 755.

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799. Welsh NHS bodies.

The accounts prepared¹ by a Welsh NHS body² must be submitted by that body to the Auditor General for Wales³ who must examine and certify them, and, no later than four months after the accounts are submitted to him, lay before the National Assembly for Wales⁴ a copy of them as certified by him together with his report on them⁵. Where an officer of a Welsh NHS body receives money or other property on behalf of that body, or for which he ought to account to that body the officer must keep accounts, which must be audited by the Auditor General for Wales⁶.

The Care Quality Commission has a duty to provide the Auditor General for Wales with relevant information⁷.

1 I.e. under the National Health Service (Wales) Act 2006 Sch 9 para 3(1): see **HEALTH SERVICES** vol 54 (2008) PARA 518.

2 As to the meaning of 'Welsh NHS body' see the Public Audit (Wales) Act 2004 s 60 (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 260, 261).

3 As to the Auditor General for Wales see **PARA 796**.

4 As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 See the Public Audit (Wales) Act 2004 s 61 (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 para 62; and the Health Act 2006 s 80(1), Sch 8 para 62). As to the Auditor General for Wales's duty to co-operate with other relevant bodies see the Public Audit (Wales) Act 2004 s 62 (amended by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 76).

6 See the Public Audit (Wales) Act 2004 s 63.

7 See the Public Audit (Wales) Act 2004 s 64 (amended by the Health and Social Care Act 2008 s 95, Sch 5, Pt 3, para 77).

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800. Assistance by Auditor General for Wales to inspectorates.

The Auditor General for Wales¹ may provide assistance² to:

- (1) Her Majesty's Chief Inspector of Prisons³;
 - (2) Her Majesty's Inspectors of Constabulary⁴;
 - (3) Her Majesty's Chief Inspector of the Crown Prosecution Service⁵;
 - (4) Her Majesty's Inspectorate of Probation for England and Wales⁶; and
 - (5) Her Majesty's Inspectorate of Court Administration⁷,
- in the discharge of any of their functions⁸.

1 As to the Auditor General for Wales see **PARA 796**.

2 For these purposes assistance may be provided on such terms, including terms as to payment, as the Auditor General for Wales and the body or person in question may agree: Public Audit (Wales) Act 2004 s 67A(2) (s 67A added by the Police and Justice Act 2006 s 52, Sch 14 para 60).

3 Public Audit (Wales) Act 2004 s 67A(1)(a) (as added: see note 2). As to Her Majesty's Chief Inspector of Prisons see **PRISONS** vol 36(2) (Reissue) **PARA 508**.

4 Public Audit (Wales) Act 2004 s 67A(1)(b) (as added: see note 2). As to Her Majesty's Inspectors of Constabulary see **POLICE** vol 36(1) (2007 Reissue) **PARA 206**.

5 Public Audit (Wales) Act 2004 s 67A(1)(c) (as added: see note 2). As to Her Majesty's Chief Inspector of the Crown Prosecution Service see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) **PARA 1069**.

6 Public Audit (Wales) Act 2004 s 67A(1)(d) (as added (see note 2); s 67A(1)(d) substituted by SI 2008/612). As to Her Majesty's Inspectorate of Probation for England and Wales see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 755**.

7 Public Audit (Wales) Act 2004 s 67A(1)(e) (as added: see note 2).

8 Public Audit (Wales) Act 2004 s 67A(1) (as added: see note 2).

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General for Wales/B. ACCOUNTS AND AUDIT OF PUBLIC BODIES/(A) Audit of Accounts/801.
Audit of accounts.

B. ACCOUNTS AND AUDIT OF PUBLIC BODIES

(A) AUDIT OF ACCOUNTS

801. Audit of accounts.

For the purposes of the Public Audit (Wales) Act 2004¹, 'local government body in Wales' means any of the following²:

- 913 (1) a local authority in Wales³;
- 914 (2) a committee of a local authority in Wales (including a joint committee of two or more local authorities in Wales)⁴;
- 915 (3) a port health authority for a port health district wholly in Wales⁵;
- 916 (4) a national park authority for a national park in Wales⁶;
- 917 (5) a conservation board established by order of the National Assembly for Wales⁷;
- 918 (6) a police authority for a police area in Wales⁸;
- 919 (7) a fire and rescue authority in Wales⁹;
- 920 (8) an internal drainage board for an internal drainage district wholly in Wales¹⁰;
- 921 (9) a local probation board for an area in Wales¹¹;
- 922 (10) A Welsh probation trust¹².

A local government body in Wales must make up its accounts each year to 31 March or such other date as may generally or in any special case be directed¹³, and must ensure that its accounts are appropriately audited¹⁴ by one or more auditors¹⁵ appointed by the Auditor General for Wales¹⁶. The Auditor General for Wales must appoint auditors to audit the accounts of local government bodies in Wales¹⁷.

1 le the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59).

2 Public Audit (Wales) Act 2004 s 12(1). The Welsh Ministers may by order amend s 12(1) by adding a public body whose functions relate exclusively to Wales or an area of Wales, by omitting a body, or by altering the description of a body: s 12(2). For these purposes 'public body' means a body which exercises functions of a public nature, or is entirely or substantially funded from public money: s 12(3). 'Body' includes office: s 71. As to the Welsh Ministers see PARA 97.

3 Public Audit (Wales) Act 2004 s 12(1)(a). 'Local authority in Wales' means a county council, county borough council or community council in Wales: Public Audit (Wales) Act 2004 s 59(5). As to areas and authorities in Wales see PARA 37 et seq.

4 Public Audit (Wales) Act 2004 s 12(1)(b). As to committees and joint committees see PARA 371 et seq.

5 Public Audit (Wales) Act 2004 s 12(1)(c). As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

6 Public Audit (Wales) Act 2004 s 12(1)(d). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

7 Public Audit (Wales) Act 2004 s 12(1)(e). A conservation board is established by order under the Countryside and Rights of Way Act 2000 s 86: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 660.

8 Public Audit (Wales) Act 2004 s 12(1)(f). As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

- 9 Public Audit (Wales) Act 2004 s 12(1)(g). A fire and rescue authority is constituted by a scheme under the Fire and Rescue Services Act 2004 s 2, or a scheme to which s 4 applies: see **FIRE SERVICES**.
- 10 Public Audit (Wales) Act 2004 s 12(1)(h). As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.
- 11 Public Audit (Wales) Act 2004 s 12(1)(i). A local probation board is established under the Criminal Justice and Court Services Act 2000 s 4: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 737.
- 12 Public Audit (Wales) Act 2004 s 12(1)(j) (as added by the Offender Management Act 2007 s 5(6), Sch 1 para 13(5)(a)). A Welsh probation trust is defined in the Offender Management Act 2007 Sch 1 para 13(6).
- 13 Public Audit (Wales) Act 2004 s 13(1)(a).
- 14 Ie in accordance with the Public Audit (Wales) Act 2004 Pt 1 Ch 1 (ss 12-40).
- 15 'Auditor' in relation to accounts of a body: (1) means a person appointed by the Auditor General for Wales under the Public Audit (Wales) Act 2004 s 13 to act as auditor of those accounts; (2) to the extent provided by s 15(3) (see PARA 802), includes a person assisting an auditor appointed under s 13 under arrangements approved under s 15(1) (see PARA 802): s 59(2). 'Auditor', if there is more than one auditor, means any of them (subject to any express provisions to the contrary): s 59(3).
- 16 Public Audit (Wales) Act 2004 s 13(1)(b). As to the Auditor General for Wales see PARA 796.
- 17 Public Audit (Wales) Act 2004 s 13(2). As to the appointment of auditors see s 14; and PARA 802.

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802. Appointment of auditors.

The Auditor General for Wales¹ may appoint² a person as an auditor³ of a local government body in Wales⁴ only if the person is eligible for appointment as a statutory auditor⁵, or is a member of a body of accountants, established in the United Kingdom or another EEA state⁶, which is for the time being approved for these purposes⁷. The Auditor General may not appoint himself⁸.

If two or more auditors are appointed to audit the accounts of a body they may be appointed (1) to act jointly⁹; (2) to act separately in relation to different parts of the accounts¹⁰; (3) to discharge different functions in relation to the audit¹¹.

Before appointing an auditor to audit the accounts of a body the Auditor General for Wales must consult the body¹². For the purpose of assisting him to decide on the appointment of auditors to audit the body's accounts, the Auditor General for Wales may require a body to make available for inspection by him or on his behalf any documents which he reasonably requires¹³.

The appointment of an auditor who is not a member of the staff of the Auditor General for Wales must be on the terms, and for the period, determined by the Auditor General for Wales¹⁴.

The Auditor General for Wales may approve arrangements, either generally or in a particular case or cases, for one or more persons to assist an auditor appointed by carrying out the functions of the auditor under the Public Audit (Wales) Act 2004¹⁵ which are specified in the arrangements¹⁶.

1 As to the Auditor General for Wales see PARA 796.

- 2 le under the Public Audit (Wales) Act 2004 s 13: see PARA 801.
- 3 As to the meaning of 'auditor' see PARA 801 note 15.
- 4 As to the meaning of 'local government body in Wales' see PARA 801.
- 5 le under the Companies Act 2006 Pt 42 (ss 1209-1264): see **COMPANIES** vol 15 (2009) PARA 969.
- 6 'EEA state' means any state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993: Public Audit (Wales) Act 2004 s 14(9).
- 7 See the Public Audit (Wales) Act 2004 s 14(1), (2), (4) (s 14(4) amended by SI 2008/948).
- 8 Public Audit (Wales) Act 2004 s 14(3).
- 9 Public Audit (Wales) Act 2004 s 14(5)(a).
- 10 Public Audit (Wales) Act 2004 s 14(5)(b).
- 11 Public Audit (Wales) Act 2004 s 14(5)(c).
- 12 Public Audit (Wales) Act 2004 s 14(6). As to the meaning of 'body' see PARA 801 note 2.
- 13 Public Audit (Wales) Act 2004 s 14(7).
- 14 Public Audit (Wales) Act 2004 s 14(8).
- 15 le under the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59).
- 16 See the Public Audit (Wales) Act 2004 s 15(1), (2). References in ss 16-59 (see PARA 803 et seq) to an auditor include, in relation to a function of an auditor, a person carrying out the function under arrangements approved under s 15(1): s 15(3).

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803. Code of audit practice.

The Auditor General for Wales¹ may issue a code of audit practice prescribing the way in which auditors² are to carry out their functions under the Public Audit (Wales) Act 2004³. A code prepared under these provisions must embody what appears to the Auditor General for Wales to be the best professional practice with respect to the standards, procedures and techniques to be adopted by auditors⁴. It may make different provision for different cases⁵.

The Auditor General for Wales must not issue a code of audit practice unless a draft of the code has been laid before, and approved by a resolution of, the National Assembly for Wales⁶. In preparing a draft of a code the Auditor General for Wales must consult any associations of local authorities in Wales⁷ which appear to him to be concerned⁸.

The Auditor General for Wales must arrange for any code issued by him under these provisions to be published in such manner as he thinks appropriate⁹. He may from time to time revise a code previously issued¹⁰.

- 1 As to the Auditor General for Wales see PARA 796.
- 2 As to the meaning of 'auditor' see PARA 801 note 15.

3 Public Audit (Wales) Act 2004 s 16(1). The functions referred to are those under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40). For the current Code of Audit Practice see the Welsh Audit Office website, accessible at the date at which this volume states the law at www.wao.gov.uk.

4 Public Audit (Wales) Act 2004 s 16(2).

5 Public Audit (Wales) Act 2004 s 16(3).

6 Public Audit (Wales) Act 2004 s 16(4). The Assembly may not delegate the function of approving a draft of a code under s 16: s 16(9). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 As to the meaning of 'local authority in Wales' see PARA 801 note 3.

8 Public Audit (Wales) Act 2004 s 16(5).

9 Public Audit (Wales) Act 2004 s 16(6).

10 Public Audit (Wales) Act 2004 s 16(8). The provisions of s 16(2)-(7) apply to a revised code as they apply to a code as first prepared: s 16(8).

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804. General duties of auditors.

In relation to the audit of the accounts of a local government body in Wales¹, an auditor² must, by examination of the accounts and otherwise, satisfy himself³:

- 923 (1) that the accounts are prepared in accordance with regulations under the Public Audit (Wales) Act 2004⁴;
- 924 (2) that they comply with the requirements of all other statutory provisions applicable to the accounts⁵;
- 925 (3) that proper practices have been observed in the compilation of the accounts⁶;
- 926 (4) that the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources⁷;
- 927 (5) that the body, if required to publish information as to standards of performance⁸, has made such arrangements for collecting and recording the information and for publishing it as are required for the performance of its duties⁹.

An auditor must comply with any provisions of a code of audit practice¹⁰ which are applicable to the audit of the accounts being audited, and are in force¹¹.

1 In relation to the audit of accounts under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40). As to the meaning of 'local government body in Wales' see PARA 801.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 See the Public Audit (Wales) Act 2004 s 17(1), (2).

4 Public Audit (Wales) Act 2004 s 17(2)(a). The regulations referred to in the text are those made under the Public Audit (Wales) Act 2004 s 39.

5 Public Audit (Wales) Act 2004 s 17(2)(b).

6 Public Audit (Wales) Act 2004 s 17(2)(c).

7 Public Audit (Wales) Act 2004 s 17(2)(d).

8 le in pursuance of a direction under the Public Audit (Wales) Act 2004 s 47: see PARA 830.

9 Public Audit (Wales) Act 2004 s 17(2)(e). The duties referred to are those under s 47: see PARA 830.

10 le issued under the Public Audit (Wales) Act 2004 s 16: see PARA 803.

11 Public Audit (Wales) Act 2004 s 17(3). At any time before there are provisions of a code of audit practice with which an auditor is required to comply under s 17(3), the auditor must comply with any provisions of a code of audit practice issued under the Audit Commission Act 1998 s 4 (see PARA 759) which are applicable to the audit under that Act of the accounts of bodies of a corresponding description to the body, and are in force: Public Audit (Wales) Act 2004 s 17(4).

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805. Auditors' rights to documents and information.

An auditor¹ has a right of access at all reasonable times to every document relating to a local government body in Wales² which appears to him necessary for the purposes of his functions³. Those documents may include, in particular:

- 928 (1) a document which is held or controlled by a person who has received financial assistance from the body by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate⁴;
- 929 (2) a document which is held or controlled by a person who has supplied goods or services to the body in pursuance of a contract to which the body was party or who has supplied goods or services in pursuance of a relevant sub-contract⁵;
- 930 (3) a document of a description specified in an order made by the Welsh Ministers⁶.

An auditor may require a person whom he thinks has certain information⁷ to give him any assistance, information and explanation which the auditor thinks necessary for the purposes of his functions⁸, and to attend before him in person to: (a) give the assistance, information or explanation⁹; or (b) produce any document which is held or controlled by the person and to which the right of access applies¹⁰.

Every local government body in Wales must provide an auditor with every facility and all information which he may reasonably need for the purposes of his functions¹¹.

A person commits an offence if, without reasonable excuse, he fails to comply with a requirement imposed by an auditor under these provisions¹² and is liable on summary conviction to a fine¹³.

1 As to the meaning of 'auditor' see PARA 801 note 15.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 Public Audit (Wales) Act 2004 s 18(1). The functions referred to are those under Pt 2 Ch 1 (ss 12-40).

4 Public Audit (Wales) Act 2004 s 18(2)(a).

5 Public Audit (Wales) Act 2004 s 18(2)(b). A contract is a relevant sub-contract if its performance fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the body in another contract: Public Audit (Wales) Act 2004 s 18(3).

6 Public Audit (Wales) Act 2004 s 18(2)(c). Before making an order under s 18(2)(c) the Welsh Ministers must consult the Auditor General for Wales, and any associations of local authorities in Wales which appear to it to be concerned: s 18(7). At the date at which this volume states the law no such orders had been made under this section. As to the Welsh Ministers see PARA 97. As to the Auditor General for Wales see PARA 796. As to the meaning of 'local authority in Wales' see PARA 801 note 3.

7 The information is information which relates to: (1) a local government body in Wales in relation to which the auditor has functions under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40); (2) a document to which the right conferred by s 18(1) (see the text to notes 1-3) applies; (3) a person who holds or controls such a document: s 18(5).

8 Public Audit (Wales) Act 2004 s 18(4)(a).

9 Public Audit (Wales) Act 2004 s 18(4)(b)(i).

10 Public Audit (Wales) Act 2004 s 18(4)(b)(ii).

11 Public Audit (Wales) Act 2004 s 18(6).

12 Ie under the Public Audit (Wales) Act 2004 s 18(4): see the text and notes 7-10.

13 See the Public Audit (Wales) Act 2004 s 19(1), (2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (see s 19(2)(a)), and to an additional fine not exceeding £20 for each day on which the offence continues after he has been convicted of it (see s 19(2)(b)). If a person is convicted of an offence under s 19(1), and expenses are incurred by an auditor in connection with proceedings for the offence, the expenses may be recovered from the convicted person or an appropriate person, to the extent that they are not recovered from any other source: see s 19(3), (4). An appropriate person is a person who controlled the document referred to in s 18(5) (see note 7) at the time the requirement was imposed: s 19(5). As to the standard scale see PARA 105 note 7.

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806. Fees for audit.

The Auditor General for Wales¹ must prescribe a scale or scales of fees payable for one or more financial years² in respect of the audit of accounts of local government bodies in Wales³ under the Public Audit (Wales) Act 2004⁴. Before prescribing any such scale of fees the Auditor General for Wales must consult⁵:

- 931 (1) any associations of local authorities in Wales⁶ which appear to him to be concerned⁷; and
- 932 (2) any bodies of accountants which appear to him to be appropriate⁸.

In prescribing any such scale of fees for a financial year the Auditor General for Wales may take account of the expenses he expects to incur in the financial year in undertaking or promoting studies⁹.

A local government body in Wales must pay to the Auditor General for Wales the fee payable in respect of the audit in accordance with the appropriate scale¹⁰. However, if it appears to the Auditor General for Wales that the work involved in a particular audit differed substantially from that envisaged by him when prescribing the appropriate scale, the Auditor General for Wales may charge a fee which differs from that referred to above¹¹. The fee payable in respect

of an audit under these provisions is the same whether or not the auditor¹² is a member of the staff of the Auditor General for Wales¹³.

If the Welsh Ministers consider that it is necessary or desirable to do so, they may prescribe by regulations a scale or scales of fees to have effect in place of a scale or scales prescribed by the Auditor General for Wales¹⁴. A scale of fees so prescribed has effect for the period specified in relation to it in the regulations¹⁵. Before making any such regulations the Welsh Ministers must consult the Auditor General for Wales, any associations of local authorities in Wales which appear to them to be concerned, and any bodies of accountants which appear to them to be appropriate¹⁶.

1 As to the Auditor General for Wales see PARA 796.

2 'Financial year' means the 12 months ending with 31 March: Public Audit (Wales) Act 2004 s 71.

3 As to the meaning of 'local government body in Wales' see PARA 801.

4 Public Audit (Wales) Act 2004 s 20(1). The audit of accounts referred to are those under Pt 2 Ch 1 (ss 12-40).

5 Public Audit (Wales) Act 2004 s 20(2).

6 As to the meaning of 'local authority in Wales' see PARA 801 note 3.

7 Public Audit (Wales) Act 2004 s 20(2)(a).

8 Public Audit (Wales) Act 2004 s 20(2)(b).

9 Public Audit (Wales) Act 2004 s 20(3). The studies referred to are those undertaken under ss 41, 42: see PARAS 823-824.

10 Public Audit (Wales) Act 2004 s 20(4).

11 Public Audit (Wales) Act 2004 s 20(5).

12 As to the meaning of 'auditor' see PARA 801 note 15.

13 Public Audit (Wales) Act 2004 s 20(6).

14 Public Audit (Wales) Act 2004 s 21(1). As to the Welsh Ministers see PARA 97. At the date at which this volume states the law no such regulations had been made under s 21.

15 Public Audit (Wales) Act 2004 s 21(2). If a scale of fees is prescribed under s 21(1) in place of a scale prescribed by the Auditor General for Wales, and the scale prescribed by the Auditor General for Wales would otherwise be the appropriate scale for the purposes of s 20(4), (5) (see the text to notes 10-11), the references to the appropriate scale in s 20(4), (5) are to be read as references to the appropriate scale prescribed under s 21(1): s 21(3), (4).

16 Public Audit (Wales) Act 2004 s 21(5).

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(B) AUDITORS' REPORTS AND RECOMMENDATIONS

807. Auditors' reports and recommendations.

In auditing accounts of a local government body in Wales¹ under the Public Audit (Wales) Act 2004², an auditor³ must consider whether, in the public interest, he should make a report on any matter which comes to his notice in the course of the audit, in order for it to be considered by the body, or brought to the attention of the public⁴. If the auditor considers that, in the public interest, he should make such a report, he must consider whether the public interest requires the matter to be made the subject of an immediate report⁵ and, if he decides it does, he must make the report immediately⁶. If the auditor considers that the public interest does not require the matter to be made the subject of an immediate report, he must make the report at the conclusion of the audit⁷.

1 As to the meaning of 'local government body in Wales' see PARA 801.

2 Under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40).

3 As to the meaning of 'auditor' see PARA 801 note 15.

4 Public Audit (Wales) Act 2004 s 22(1).

5 Public Audit (Wales) Act 2004 s 22(2).

6 See the Public Audit (Wales) Act 2004 s 22(3). In a case within s 22(3) the auditor must send the report to the body, and a copy of the report to the Auditor General for Wales, immediately after making it: s 22(5). As to additional publicity for immediate reports see PARA 808. As to the Auditor General for Wales see PARA 796.

7 Public Audit (Wales) Act 2004 s 22(4). In a case within s 22(4), the auditor must send the report to the body, and a copy of the report to the Auditor General for Wales, before the end of the period of 14 days starting with the day on which he concludes the audit: s 22(6). As to additional publicity for non-immediate reports see PARA 809.

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808. Additional publicity for immediate reports.

Where an auditor¹ has sent an immediate report² to a local government body in Wales³, from the time when the report is received by the body any member of the public may⁴:

- 933 (1) inspect the report at all reasonable times without payment⁵;
- 934 (2) make a copy of the report or any part of it at all reasonable times without payment⁶;
- 935 (3) require the body to supply him on payment of a reasonable sum with a copy of the report or any part of it⁷.

On receiving the report⁸ a body must immediately ensure that a notice is published in one or more newspapers circulating in the area of the body, and supply a copy of the report to every member of the body⁹. The notice must identify the subject matter of the report, and state that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in the notice¹⁰.

The auditor who has made the report may notify any person that he has made the report, and supply a copy of the report or of any part of it to any person¹¹.

A person who has custody of an immediate report commits an offence if¹²:

- 936 (a) he obstructs a person in the exercise of a right conferred by head (1) or (2) above¹³; or
 937 (b) he refuses to comply with a requirement under head (3) above¹⁴.

- 1 As to the meaning of 'auditor' see PARA 801 note 15.
 2 le a report made under the Public Audit (Wales) Act 2004 s 22(3), and sent under s 22(5): see PARA 807.
 3 As to the meaning of 'local government body in Wales' see PARA 801.
 4 See the Public Audit (Wales) Act 2004 s 27(1), (2).
 5 Public Audit (Wales) Act 2004 s 27(2)(a).
 6 Public Audit (Wales) Act 2004 s 27(2)(b).
 7 Public Audit (Wales) Act 2004 s 27(2)(c).
 8 le the report sent to the body under the Public Audit (Wales) Act 2004 s 22(5): see PARA 807.
 9 Public Audit (Wales) Act 2004 s 27(3). A body which fails to comply with a requirement of s 27(3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 27(8), (9). As to the standard scale see PARA 105 note 7.
 10 Public Audit (Wales) Act 2004 s 27(4).
 11 Public Audit (Wales) Act 2004 s 27(5).
 12 Public Audit (Wales) Act 2004 s 27(6). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 27(7).
 13 Public Audit (Wales) Act 2004 s 27(6)(a).
 14 Public Audit (Wales) Act 2004 s 27(6)(b).

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809. Additional publicity for non-immediate reports.

Where an auditor¹ has sent a non-immediate report² to a local government body in Wales³, the auditor may⁴:

- 938 (1) notify any person that he has made the report⁵;
 939 (2) publish the report⁶;
 940 (3) supply a copy of the report or any part of it to any person⁷.

From the time when the report is sent to the body:

- 941 (a) the auditor must ensure that any member of the public may: (i) inspect the report at all reasonable times without payment; (ii) make a copy of the report or any part of it at all reasonable times without payment⁸;
 942 (b) any member of the public may require the auditor to supply him on payment of a reasonable sum with a copy of the report or any part of it⁹.

From the end of the period of one year starting with the day on which the report is sent to the body, the obligations of the auditor under the above provision cease to be his obligations, but become obligations of the Auditor General for Wales instead¹⁰.

- 1 As to the meaning of 'auditor' see PARA 801 note 15.
- 2 Ie a report made under the Public Audit (Wales) Act 2004 s 22(4), and sent under s 22(6): see PARA 807.
- 3 As to the meaning of 'local government body in Wales' see PARA 801.
- 4 Public Audit (Wales) Act 2004 s 28(1), (2).
- 5 Public Audit (Wales) Act 2004 s 28(2)(a).
- 6 Public Audit (Wales) Act 2004 s 28(2)(b).
- 7 Public Audit (Wales) Act 2004 s 28(2)(c).
- 8 Public Audit (Wales) Act 2004 s 28(3)(a).
- 9 Public Audit (Wales) Act 2004 s 28(3)(b).
- 10 Public Audit (Wales) Act 2004 s 28(4). As to the Auditor General for Wales see PARA 796.

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810. General report.

When an auditor¹ has concluded his audit of a body's accounts², if a statement of accounts is required to be prepared by regulations³, the auditor must enter on the statement (or, where no such statement is required to be prepared, on the accounts) a certificate that he has completed the audit in accordance with the Public Audit (Wales) Act 2004, and his opinion on the statement (or, as the case may be, on the accounts)⁴. But if an auditor makes a report⁵ at the conclusion of the audit, he may include the certificate and opinion referred to above in the report instead of making an entry on the statement or accounts⁶.

- 1 As to the meaning of 'auditor' see PARA 801 note 15.
- 2 See the Public Audit (Wales) Act 2004 s 23(1). The conclusion of an audit referred to in the text is under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40).
- 3 Ie under the Public Audit (Wales) Act 2004 s 39.
- 4 See the Public Audit (Wales) Act 2004 s 23(2), (3).
- 5 Ie under the Public Audit (Wales) Act 2004 s 22: see PARA 807.
- 6 Public Audit (Wales) Act 2004 s 23(4).

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General for Wales/B. ACCOUNTS AND AUDIT OF PUBLIC BODIES/(B) Auditors' Reports and Recommendations/811. Consideration of reports in public interest.

811. Consideration of reports in public interest.

If an auditor¹ makes a public interest report² on a matter which comes to his notice in the course of the audit, the body, if it is a port authority³, conservation board⁴, internal drainage board⁵, local probation board⁶ or a probation trust, must take the report into consideration as soon as practicable after receiving it⁷.

In any other case where a body is required to take a report into consideration, or where the auditor sends to the body a written recommendation, and states in the document containing the recommendation that in his opinion the recommendation should be considered⁸, the body must consider the report or recommendation at a meeting held by it before the end of the period of one month starting with the day on which the auditor sends the report or recommendation to it⁹. At the meeting the body must decide: (1) if a report is considered at the meeting, whether the report requires it to take any action; (2) if a recommendation is considered at the meeting, whether the recommendation is to be accepted; and (3) what action, if any, to take in response to the report or recommendation¹⁰.

1 As to the meaning of 'auditor' see PARA 801 note 15.

2 Is a report under the Public Audit (Wales) Act 2004 s 22: see PARA 807.

3 As to port health authorities see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102 et seq.

4 As to conservation boards see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 660.

5 As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

6 As to local probation boards see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 737 et seq.

7 See the Public Audit (Wales) Act 2004 s 24(1), (2)(a), (3) (s 24(1) amended by the Offender Management Act 2007 s 5(6), Sch 1 para 13(5)(b)). The agenda supplied to members of the body for the meeting of the body at which the report is to be considered must be accompanied by the report: s 24(4). The following powers do not include power to exclude the report: (1) the power under the Public Bodies (Admission to Meetings) Act 1960 s 1(4)(b) (see PARA 650) to exclude items from the matter supplied under that provision (supply of agenda etc to newspapers); (2) the power under the Local Government Act 1972 s 100B(2) to exclude documents from the documents open to inspection under s 100B(1), or exclude items from the matter supplied under s 100B(7) (see PARA 662) (public access to agenda and reports before meetings and supply of agenda etc to newspapers): Public Audit (Wales) Act 2004 s 24(5), (6). The Local Government Act 1972 Pt 5A (ss 100A-100K: see PARA 661 et seq) has effect in relation to the report as if s 100C(1)(d) (public access to copies of reports for six years after meeting) were not limited to so much of the report as relates to an item during which the meeting was open to the public: Public Audit (Wales) Act 2004 s 24(7). Nothing in s 27 (see PARA 808) affects the operation of s 24(4)-(7): s 27(10).

8 See the Public Audit (Wales) Act 2004 ss 24(2)(b), 25(1), (2).

9 See the Public Audit (Wales) Act 2004 25(4). An auditor may extend the period of one month mentioned in s 25(4) in relation to a report or recommendation if he is satisfied that it is reasonable to allow the body more time to comply with its duties under s 25(4), (5) in relation to the report or recommendation: s 25(6). A period may be extended under s 25(6) more than once: s 25(7).

10 Public Audit (Wales) Act 2004 s 25(5). Nothing in the Local Government Act 1972 s 101 (delegation of functions) applies to a duty imposed on a body by the Public Audit (Wales) Act 2004 s 25: s 25(8). Section 25 does not affect any duties (so far as they relate to the subject matter of a report or recommendation) imposed by or under the Public Audit (Wales) Act 2004; the Local Government Finance Act 1988 ss 114-116 (reports by chief finance officers); the Local Government and Housing Act 1989 s 5 (functions of monitoring officers); or any other enactment: s 25(9).

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812. Publicity for meetings.

If a body is required¹ to hold a meeting for consideration of an auditor's² report or recommendation, the meeting may be held on a particular day only if, at least seven clear days before that day, a notice³ has been published in a newspaper circulating in the area of the body⁴. The notice must:

- 943 (1) state the time and place of the meeting⁵;
- 944 (2) indicate that the meeting is to be held to consider an auditor's report or recommendation, as the case may be⁶; and
- 945 (3) describe the subject matter of the report or recommendation⁷.

As soon as practicable after the meeting the body must:

- 946 (a) ensure that the auditor is notified of the decisions made by the body⁸;
- 947 (b) obtain the approval of the auditor to a written summary of those decisions (the 'approved summary')⁹; and
- 948 (c) ensure that a notice containing the approved summary is published in one or more newspapers circulating in the area of the body¹⁰.

1 le by virtue of the Public Audit (Wales) Act 2004 s 25(4): see PARA 811.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 le a notice complying with the Public Audit (Wales) Act 2004 s 26(3): see the text to note 5-7.

4 See the Public Audit (Wales) Act 2004 s 26(1), (2).

5 Public Audit (Wales) Act 2004 s 26(3)(a).

6 Public Audit (Wales) Act 2004 s 26(3)(b).

7 Public Audit (Wales) Act 2004 s 26(3)(c).

8 Public Audit (Wales) Act 2004 s 26(4)(a). The decisions referred to in the text are those made under the Public Audit (Wales) Act 2004 s 25(5): see PARA 811.

9 Public Audit (Wales) Act 2004 s 26(4)(b).

10 Public Audit (Wales) Act 2004 s 26(4)(c). The approved summary need not summarise any decision made at the meeting while the public were excluded: (1) under the Local Government Act 1972 s 100A(2) (see PARA 661) (confidential information); (2) in pursuance of a resolution under s 100A(4) (see PARA 661) (exempt information); (3) in pursuance of a resolution under the Public Bodies (Admission to Meetings) Act 1960 s 1(2) (protection of public interest): Public Audit (Wales) Act 2004 s 26(5). But if the Local Government Act 1972 ss 100C, 100D (see PARAS 663, 664) (availability for inspection after meeting of minutes, background papers and other documents) apply in relation to the meeting, the approved summary must indicate the documents in relation to the meeting which are open for inspection under those provisions: Public Audit (Wales) Act 2004 s 26(6). Section 26 does not affect any provisions made in relation to meetings of a body by s 24(4)-(7) (see PARA 811) or by or under (a) the Local Government Act 1972; (b) the Public Bodies (Admission to Meetings) Act 1960; (c) any other enactment: Public Audit (Wales) Act 2004 s 26(7).

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(C) PUBLIC INSPECTION AND OBJECTIONS

813. Public inspections and objections.

A local government elector¹ for the area of a local government body in Wales² may:

- 949 (1) at all reasonable times and without payment inspect and make a copy³ of any statement of accounts prepared by the body pursuant to regulations under the Public Audit (Wales) Act 2004⁴;
- 950 (2) at all reasonable times and without payment inspect and make a copy of any report, other than an immediate report⁵, made to the body⁶ by an auditor⁷;
- 951 (3) require a copy of a statement or report falling within head (1) or (2) to be delivered to him on payment of a reasonable sum for each copy⁸.

A person who has custody of a document falling within head (1) or (2) commits an offence if he obstructs a person in the exercise of a right under these provisions to inspect or make a copy of the document, or he refuses to supply a copy of the document to a person entitled to the copy under head (3)⁹.

1 'Local government elector' means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 3); Public Audit (Wales) Act 2004 s 59(6). A reference to a local government elector for an area, in relation to a national park authority which is the local planning authority for a national park, is to a local government elector for any area the whole or part of which is comprised in the park: s 59(7). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 For these purposes references to a copy of a document include a copy of any part of it: Public Audit (Wales) Act 2004 s 29(4).

4 Public Audit (Wales) Act 2004 s 29(1)(a). The regulations referred to in the text are those made under the Public Audit (Wales) Act 2004 s 39.

5 I.e a report under the Public Audit (Wales) Act 2004 s 22(3) (see PARA 807).

6 As to the meaning of 'body' see PARA 801 note 2.

7 Public Audit (Wales) Act 2004 s 29(1)(b)

8 Public Audit (Wales) Act 2004 s 29(1)(c).

9 Public Audit (Wales) Act 2004 s 29(2). A person guilty of an offence under s 29(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 29(3). As to the standard scale see PARA 105 note 7.

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814. Inspection of documents and questions at audit.

At an audit of accounts under the Public Audit (Wales) Act 2004¹ an interested person may inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and may make a copy of all or any part of the accounts and of any of the other above documents². At the request of a local government elector³ for any area to which accounts to be audited relate, the auditor⁴ of those accounts must give the elector, or any representative of his, an opportunity to question the auditor about the accounts⁵. Nothing in the above provisions entitles a person to inspect any accounts or other document relating to a body⁶ to the extent that the accounts contain, or the document contains, personal information⁷, or to require any personal information to be disclosed by a body's auditor in answer to any question⁸.

1 le under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40).

2 Public Audit (Wales) Act 2004 s 30(1).

3 As to the meaning of 'local government elector' see PARA 813 note 1.

4 As to the meaning of 'auditor' see PARA 801 note 15.

5 Public Audit (Wales) Act 2004 s 30(2).

6 As to the meaning of 'body' see PARA 801 note 2.

7 Public Audit (Wales) Act 2004 s 30(3)(a). For the purposes of the Public Audit (Wales) Act 2004 s 30(3) 'personal information' means information relating to an individual which is available to the body for reasons connected with either: (1) the fact that the individual holds or has held an office or employment under the body; or (2) the fact that payments or other benefits are or have been made or provided to the individual by the body in respect of an office or employment under another person: s 30(4). For the purposes of s 30(4) payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to an individual in respect of his ceasing to hold the office or employment: s 30(5).

8 Public Audit (Wales) Act 2004 s 30(3)(b). See also note 7.

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815. Right to make objections at audit.

At an audit of accounts under the Public Audit (Wales) Act 2004¹ a local government elector² for the area to which the accounts relate, or any representative of his, may make objections before the auditor³. A local government elector proposing to make such an objection must give written notice to the auditor of the proposed objection and the grounds on which it is to be made, and, at the same time, send a copy of the notice to the body whose accounts are being audited⁴.

1 le under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40).

2 As to the meaning of 'local government elector' see PARA 813 note 1.

3 Public Audit (Wales) Act 2004 s 31(1). Objections may be made as to (1) any matter in respect of which the auditor has a power to apply for a declaration under s 32 (see PARA 816); or (2) any other matter in respect of which the auditor has the power to make a report under s 22 (see PARA 807): s 31(1). As to the meaning of 'auditor' see PARA 801 note 15.

4 Public Audit (Wales) Act 2004 s 31(2).

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(D) UNLAWFUL ITEMS OF ACCOUNT AND EXPENDITURE

816. Unlawful items of account and expenditure.

Where it appears to an auditor¹ carrying out an audit under the Public Audit (Wales) Act 2004² that an item of account is contrary to law, the auditor may apply to the court³ for a declaration that the item is contrary to law⁴. On such an application the court may make or refuse to make the declaration applied for⁵. If it makes the declaration applied for it may also order rectification of the accounts⁶.

If an auditor decides not to make an application for a declaration under these provisions in relation to an item of account, he must notify a person who has made an objection⁷ in relation to the item of account of his decision⁸. A person so notified of an auditor's decision may require the auditor to state in writing the reasons for his decision before the end of the permitted period⁹. A person who receives reasons for an auditor's decision may appeal to the court against the decision before the end of the permitted period¹⁰.

On such an appeal the court has the same powers in relation to the item of account as it would have if the auditor had applied to the court for a declaration¹¹ in relation to the item of account¹².

On an application or appeal under these provisions relating to the accounts of a body¹³, the court may make such order as it thinks fit for the payment by the body of expenses incurred in connection with the application or appeal by the auditor, or the person by whom the appeal is brought¹⁴.

1 As to the meaning of 'auditor' see PARA 801 note 15.

2 Ie under the Public Audit (Wales) Act 2004 Pt 2 Ch 1 (ss 12-40).

3 The High Court and the county courts have jurisdiction for the purposes of the Public Audit (Wales) Act 2004 s 32: s 32(10).

4 Public Audit (Wales) Act 2004 s 32(1).

5 Public Audit (Wales) Act 2004 s 32(2).

6 Public Audit (Wales) Act 2004 s 32(3).

7 Ie under the Public Audit (Wales) Act 2004 s 31(1)(a): see PARA 815.

8 Public Audit (Wales) Act 2004 s 32(4). Section 32(4) does not apply if the person who has made the objection has failed to comply with s 31(2) (see PARA 815): s 32(5).

9 Public Audit (Wales) Act 2004 s 32(6). The permitted period for these purposes is 14 days starting with the day on which the person is notified of the auditor's decision: s 32(6).

10 Public Audit (Wales) Act 2004 s 32(7). The permitted period for these purposes is 28 days starting with the day on which he receives the reasons: s 32(7).

- 11 le under the Public Audit (Wales) Act 2004 s 32(1): see the text and notes 1-4.
- 12 Public Audit (Wales) Act 2004 s 32(8).
- 13 As to the meaning of 'body' see PARA 801 note 2.
- 14 Public Audit (Wales) Act 2004 s 32(9).

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817. Advisory notices.

An auditor¹ of accounts of a local government body in Wales² may issue a notice under this provision (an 'advisory notice'³) if he has reason to believe that one or more of the following requirements is met⁴:

- 952 (1) the body or an officer of the body is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful⁵;
- 953 (2) the body or an officer of the body is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency⁶;
- 954 (3) the body or an officer of the body is about to enter an item of account, the entry of which is unlawful⁷.

A copy of an advisory notice:

- 955 (a) must be served on the body to which, or to an officer of which, it is addressed⁸;
- 956 (b) if the notice is addressed to an officer, must be served on him⁹;
- 957 (c) may be served on any other person considered appropriate by the auditor by whom the notice is issued¹⁰.

An advisory notice may at any time be withdrawn by the person who for the time being is the auditor of the body to which, or to an officer of which, the notice was addressed¹¹. The auditor by whom an advisory notice is withdrawn must give notice in writing of the withdrawal to any body or person on whom a copy of the advisory notice was served¹².

1 As to the meaning of 'auditor' see PARA 801 note 15.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 An advisory notice is a notice which meets the following requirements: (1) it is addressed to the body or officer; (2) it specifies which of the requirements specified in the Public Audit (Wales) Act 2004 s 33(2) is met and the decision, course of action or item of account to which the notice relates; (3) it specifies that the notice will take effect on the day a copy of it is served on the person to whom it is addressed; (4) it requires the body or officer to give the auditor of the body's accounts not less than the specified period of notice in writing of the intention of the body or officer to (a) make or implement the decision to which the notice relates; (b) take or continue to take the course of action to which the notice relates; or (c) enter the item of account to which the notice relates: s 33(4). For the purposes of head (4) the specified period of notice is the period (not exceeding 21 days) specified in the advisory notice: s 33(5). As to the meaning of 'body' see PARA 801 note 2.

4 See the Public Audit (Wales) Act 2004 s 33(1). For the purposes of s 33 the actions of any body or officer mentioned in s 33(2) (see notes 5-7) are to be treated as the actions of: (1) a committee or sub-committee of the body; (2) a person (other than an officer of the body) authorised to act on behalf of the body: s 33(3).

5 Public Audit (Wales) Act 2004 s 33(2)(a).

6 Public Audit (Wales) Act 2004 s 33(2)(b).

7 Public Audit (Wales) Act 2004 s 33(2)(c).

8 Public Audit (Wales) Act 2004 s 33(6)(a).

9 Public Audit (Wales) Act 2004 s 33(6)(b). A document to be served on an officer of a body under the Public Audit (Wales) Act 2004 s 33 must be served on him by addressing it to him and: (1) delivering it to him at an office of the body at which he is employed; (2) leaving it at such an office; or (3) sending it by post to such an office: s 33(9).

10 Public Audit (Wales) Act 2004 s 33(6)(c). The auditor by whom an advisory notice is issued must, before the end of the required period, serve a statement of his reasons for the belief referred to in s 33(1) (see the text and notes 1-4) on the body, and, if the advisory notice is addressed to an officer of the body, the officer: s 33(7). The required period for the purposes of s 33(7) is seven days starting on the day on which a copy of the advisory notice was served on the person to whom it is addressed: s 33(8).

11 Public Audit (Wales) Act 2004 s 33(10). If two or more auditors are appointed in relation to a body's accounts an advisory notice may be issued or withdrawn by the auditors acting jointly or by one of the auditors determined by them: s 33(12).

12 Public Audit (Wales) Act 2004 s 33(11).

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818. Effect of an advisory notice.

While an advisory notice¹ has effect, it is not lawful for the body concerned² or an officer of the body³:

- 958 (1) if the advisory notice relates to a decision, to make or implement the decision⁴;
- 959 (2) if the advisory notice relates to a course of action, to take or continue to take the course of action⁵;
- 960 (3) if the advisory notice relates to an item of account, to enter the item of account⁶,

unless and until the following conditions are met:

- 961 (a) that the body has considered, in the light of the advisory notice and the statement of reasons for belief⁷, the consequences of doing the thing mentioned in whichever of heads (1) to (3) above is applicable⁸;
- 962 (b) that the body or officer has given the person who is for the time being the auditor⁹ of the body's accounts the period of notice in writing required by the advisory notice¹⁰;
- 963 (c) that that period has expired¹¹.

An advisory notice takes effect on the day on which a copy of the notice is served on the person to whom it is addressed¹². It ceases to have effect (i) if a statement of reasons is not served¹³, at the end of the specified period¹⁴; (ii) in any other case, when it is withdrawn¹⁵.

An auditor may recover from the body concerned any expenses reasonably incurred by him in or in connection with the issue of an advisory notice¹⁶.

Where, before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land, and before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition, the existence of the advisory notice does not prejudice any remedy in damages which may be available to any person as a result of the body's failure to complete the contract¹⁷.

No action lies against an auditor in respect of loss or damage alleged to have been caused as a result of the issue of an advisory notice which was issued in good faith¹⁸.

1 As to the meaning of 'advisory notice' see PARA 817 note 3.

2 In the Public Audit (Wales) Act 2004 s 34 the 'body concerned', in relation to an advisory notice, means the body to which, or to an officer of which, the notice is addressed: s 34(9). For the purposes of s 34 the actions of any body or officer are to be treated as the actions of: (1) a committee or sub-committee of the body; (2) a person (other than an officer of the body) authorised to act on behalf of the body: s 33(3).

3 See the Public Audit (Wales) Act 2004 s 34(1).

4 Public Audit (Wales) Act 2004 s 34(2).

5 Public Audit (Wales) Act 2004 s 34(3).

6 Public Audit (Wales) Act 2004 s 34(4).

7 Ie under the Public Audit (Wales) Act 2004 s 33(7): see PARA 817.

8 Public Audit (Wales) Act 2004 s 34(5)(a).

9 As to the meaning of 'auditor' see PARA 801 note 15.

10 Public Audit (Wales) Act 2004 s 34(5)(b). The advisory notice referred to in the text is required under the Public Audit (Wales) Act 2004 s 33(4)(d): see PARA 817 note 3.

11 Public Audit (Wales) Act 2004 s 34(5)(c).

12 Public Audit (Wales) Act 2004 s 34(6).

13 Ie in accordance with the Public Audit (Wales) Act 2004 s 33(7): see PARA 817.

14 Ie the period specified in the Public Audit (Wales) Act 2004 s 33(8): see PARA 817.

15 Public Audit (Wales) Act 2004 s 34(7). The reference in the text to withdrawal is a reference to withdrawal under s 33(10): see PARA 817.

16 Public Audit (Wales) Act 2004 s 34(8).

17 Public Audit (Wales) Act 2004 s 35(1), (2).

18 Public Audit (Wales) Act 2004 s 35(3).

General for Wales/B. ACCOUNTS AND AUDIT OF PUBLIC BODIES/(D) Unlawful Items of Account and Expenditure/819. Power of auditor to make a claim for judicial review.

819. Power of auditor to make a claim for judicial review.

An auditor¹ appointed to audit accounts of a local government body in Wales² may make a claim for judicial review with respect to a decision of the body or a failure of the body to act, if it is reasonable to believe that the decision or failure to act would have an effect on the body's accounts³. The existence of the powers conferred on an auditor under the Public Audit (Wales) Act 2004⁴ is not a ground for refusing such a claim, or for refusing an application for permission to make such a claim⁵. On a claim by an auditor for judicial review with respect to a decision of a body or a failure of a body to act, the court may make any order it thinks fit for the payment by the body of expenses incurred by the auditor in connection with the claim⁶.

1 As to the meaning of 'auditor' see PARA 801 note 15.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 Public Audit (Wales) Act 2004 s 36(1). Section 36(1) is subject to the Supreme Court Act 1981 s 31(3) (no claim for judicial review without permission of court) (see **JUDICIAL REVIEW** vol 61 (2010) PARA 656): Public Audit (Wales) Act 2004 s 36(2). As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. As from a day to be appointed the Public Audit (Wales) Act 2004 s 36(1) is amended by virtue of the Constitutional Reform Act 2005 s 59(5), Sch 11, Pt 1, para 1(2) to replace the reference to the Supreme Court Act 1981 with a reference to the Senior Courts Act 1981. At the date at which this volume states the law no such day had been appointed.

4 le under the Public Audit (Wales) Act 2004 Pt 2 (ss 12-60).

5 Public Audit (Wales) Act 2004 s 36(3).

6 Public Audit (Wales) Act 2004 s 36(4).

UPDATE

819 Power of auditor to make a claim for judicial review

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

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(E) MISCELLANEOUS

820. Extraordinary audit.

The Auditor General for Wales¹ may direct an auditor² to hold an extraordinary audit³ of the accounts of a local government body in Wales⁴ if the following conditions⁵ are met⁶:

- 964 (1) if it appears to the Auditor General for Wales to be desirable to hold an extraordinary audit of the body's accounts⁷; or
- 965 (2) if an application for an extraordinary audit of the body's accounts is made by a local government elector⁸ for the area of the body⁹.

The Welsh Ministers¹⁰ may require the Auditor General for Wales to direct an auditor to hold an extraordinary audit of the accounts of a local government body in Wales if it appears to the Ministers to be desirable in the public interest for an extraordinary audit of the body's accounts to be held¹¹.

An extraordinary audit of a body's accounts may be held only if three clear days' notice in writing of the audit is given to the body¹².

The expenditure incurred in holding an extraordinary audit of a body's accounts must be met in the first instance by the Auditor General for Wales¹³. He may recover all or part of the expenditure from the body¹⁴.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 The following provisions apply to an extraordinary audit under the Public Audit (Wales) Act 2004 s 37 as they apply to an ordinary audit: s 15 (see PARA 802), ss 17-19 (see PARAS 804, 805), ss 22-28 (see PARA 807-812), ss 31, 32 (see PARAS 815, 816): s 37(5).

4 As to the meaning of 'local government body in Wales' see PARA 801. As to the meaning of 'body' see PARA 801 note 2.

5 As to the conditions in the Public Audit (Wales) Act 2004 s 37(2), (3): see the text to notes 7-9.

6 Public Audit (Wales) Act 2004 s 37(1).

7 Public Audit (Wales) Act 2004 s 37(2).

8 As to the meaning of 'local government elector' see PARA 813 note 1.

9 Public Audit (Wales) Act 2004 s 37(3).

10 As to the Welsh Ministers see PARA 96.

11 Public Audit (Wales) Act 2004 s 37(4).

12 Public Audit (Wales) Act 2004 s 37(6).

13 Public Audit (Wales) Act 2004 s 37(7).

14 Public Audit (Wales) Act 2004 s 37(8).

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821. Audit of accounts of officers.

If an officer of a local government body in Wales¹ receives money or other property on behalf of the body, or for which he ought to account to the body, the auditor² of the body's accounts must audit the officer's accounts³.

1 As to the meaning of 'local government body in Wales' see PARA 801. As to officers see PARA 425 et seq.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 Public Audit (Wales) Act 2004 s 38(1), (2). The following provisions apply with the necessary modifications to the accounts and audit: s 13(1) (see PARA 801), ss 17-24 (see PARA 804 et seq), ss 27-32 (see PARAS 808, 809, 813-816), s 37 (see PARA 820), and s 39: s 38(3).

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822. Documents relating to police authorities.

If the Auditor General for Wales¹ receives a copy of a public interest report² and the report relates to a police authority for a police area in Wales³, he must send a copy of the report to the Secretary of State and the Welsh Ministers⁴.

If the Auditor General for Wales has sent a document, or a copy of a document, relating to one or more police authorities for police areas in Wales to a police authority for a police area in Wales, he may send a copy of the document to the Secretary of State and the Assembly⁵.

1 As to the Auditor General for Wales see PARA 796.

2 I.e a report under the Public Audit (Wales) Act 2004 s 22(5), (6): see PARA 807.

3 As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

4 Public Audit (Wales) Act 2004 s 40(1). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

5 Public Audit (Wales) Act 2004 s 40(2).

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C. STUDIES, PERFORMANCE STANDARDS AND OTHER FUNCTIONS

(A) STUDIES AND RELATED FUNCTIONS

823. Studies for improving economy, efficiency and effectiveness in the provision of services.

The Auditor General for Wales¹ must for each financial year² undertake or promote studies designed to enable him to make recommendations³:

- 966 (1) for improving economy, efficiency and effectiveness in the discharge of the functions of local government bodies in Wales⁴ that are also best value authorities⁵;
- 967 (2) for improving economy, efficiency and effectiveness in the provision of services provided by other local government bodies in Wales⁶;

- 968 (3) for improving the financial or other management of local government bodies in Wales⁷.

The studies which the Auditor General for Wales is required to undertake or promote include, in particular⁸:

- 969 (a) studies designed to enable the Auditor General for Wales to determine what directions he should give⁹;
- 970 (b) studies of information published in pursuance of directions¹⁰ which are designed to enable the Auditor General for Wales to determine, in relation to each financial year, what comparative information to publish himself about the standards of performance achieved by bodies which are relevant bodies for these purposes¹¹.

The Auditor General for Wales may undertake or promote other studies relating to the provision of services by local government bodies in Wales¹².

Where the Auditor General for Wales undertakes or promotes a study under these provisions, he must publish or otherwise make available the results of the study, and any recommendations made by him¹³.

Before undertaking or promoting a study under this provision, other than a study of a kind mentioned in head (a) or (b) above, the Auditor General for Wales must consult¹⁴:

- 971 (i) any associations of local government bodies in Wales which appear to him to be concerned¹⁵; and
- 972 (ii) any associations of employees which appear to him to be appropriate¹⁶.

The Auditor General for Wales must co-operate with the Audit Commission¹⁷ where it seems to him appropriate to do so for the efficient and effective discharge of his functions under the above provisions¹⁸.

The Auditor General for Wales may undertake or promote studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of any relevant body¹⁹ or bodies²⁰. The Auditor General may also undertake or promote other studies relating to the provision of services by any relevant body or bodies²¹. However, these provisions²² do not entitle the Auditor General to question the merits of the policy objectives of any relevant body²³. In determining how to exercise these functions²⁴, the Auditor General must take into account the views of the audit committee as to the studies which he should undertake or promote²⁵.

1 As to the Auditor General for Wales see PARA 796. The Auditor General for Wales and the Welsh Ministers must co-operate with each other with respect to the exercise of their respective functions under s 41 and under the Health and Social Care (Community Health and Standards) Act 2003 ss 94, 95 (see **SOCIAL SERVICES AND COMMUNITY CARE**) (reviews, investigations and studies): Public Audit (Wales) Act 2004 s 41(6). As to the Welsh Ministers see PARA 96

2 As to the meaning of 'financial year' see PARA 806 note 2.

3 Public Audit (Wales) Act 2004 s 41(1).

4 As to the meaning of 'local government body in Wales' see PARA 801.

5 Public Audit (Wales) Act 2004 s 41(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 s 144(2), Sch 8, Pt 2, para 27(1), (2)). Best value authorities are designated as such for the purposes of the Local Government Act 1999 Pt 1 (ss 1-29): see PARA 688 et seq. As from a day to be appointed the Public Audit (Wales) Act 2004 s 41(1)(a) is amended by the Local Government (Wales) Measure 2009 Sch 1

paras 34, 35 to add a reference to a Welsh improvement authority for the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-47) (see PARA 711 et seq). At the date at which this volume states the law no such day had been appointed.

6 Public Audit (Wales) Act 2004 s 41(1)(b).

7 Public Audit (Wales) Act 2004 s 41(1)(c).

8 Public Audit (Wales) Act 2004 s 41(2).

9 Public Audit (Wales) Act 2004 s 41(2)(a). The directions referred to in the text are those given under the Public Audit (Wales) Act 2004 s 47 (publication of information as to standards of performance): see PARA 830.

10 Ie under the Public Audit (Wales) Act 2004 s 47: see PARA 830.

11 Public Audit (Wales) Act 2004 s 41(2)(b).

12 Public Audit (Wales) Act 2004 s 41(3).

13 Public Audit (Wales) Act 2004 s 41(4).

14 Public Audit (Wales) Act 2004 s 41(5).

15 Public Audit (Wales) Act 2004 s 41(5)(a).

16 Public Audit (Wales) Act 2004 s 41(1)(b).

17 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England: Public Audit (Wales) Act 2004 s 71 (definition amended by the Local Government and Public Involvement in Health Act 2007 ss 146(3), 241, Sch 9 para 1(1), (2)(w), Sch 18, Pt 9). As to the Audit Commission see PARA 744 et seq.

18 Public Audit (Wales) Act 2004 s 43.

19 For these purposes each of the following is a 'relevant body':

108 (1) a person who prepares accounts or statements of accounts falling to be examined by the Auditor General for Wales in accordance with any provision made by or under the Government of Wales Act 1998 or any other Act (s 145A(5)(a) (as added (see note 20); and substituted by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 47));

109 (2) any other person (other than a local government body in Wales) in relation to whom, by virtue of provision made by or under this or any other Act, the Auditor General for Wales carries out examinations or studies relating to the economy, efficiency and effectiveness with which that person has used his resources in discharging his functions (Government of Wales Act 1998 s 145A(5)(b) (as so added));

110 (3) a person (other than a registered social landlord in Wales) in respect of whom the Auditor General for Wales has functions by virtue of provision made under s 146A (see PARA 797) (s 145A(5)(c) (as so added)).

For these purposes 'local government body in Wales' has the meaning given in the Public Audit (Wales) Act 2004 s 12(1) (see PARA 801); and 'registered social landlord in Wales', has the meaning given in the Government of Wales Act 1998 s 146A(2) (see PARA 797): s 145A(7) (as so added).

20 Government of Wales Act 1998 s 145A(1) (s 145A added by the Public Audit (Wales) Act 2004 s 3).

21 Government of Wales Act 1998 s 145A(2) (as added: see note 20).

22 Ie the provisions of the Government of Wales Act 1998 s 145A(1), (2): see the text and notes 19-21).

23 Government of Wales Act 1998 s 145A(3) (as added: see note 20).

24 Ie his functions under the Government of Wales Act 1998 s 145A.

25 Government of Wales Act 1998 s 145A(4) (as added: see note 20). Where the Auditor General for Wales undertakes or promotes a study under this section he may arrange for a report containing (1) the results of the

study; and (2) his recommendations (if any), to be laid before the National Assembly for Wales: s 145A(6) (as so added).

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824. Studies on impact of statutory provisions.

The Auditor General for Wales¹ must undertake or promote studies designed to enable him to prepare reports as to the impact of²:

- 973 (1) the operation of any statutory provisions³; or
- 974 (2) any relevant directions or guidance given (whether or not under a statutory provision)⁴,

on economy, efficiency and effectiveness in the discharge of the functions of local government bodies in Wales⁵. The Auditor General for Wales must from time to time lay before the National Assembly for Wales a report of any matters which, in his opinion, arise out of studies under this provision, and ought to be drawn to the attention of the Assembly⁶.

Before undertaking or promoting any such study, the Auditor General for Wales must consult any associations of local government bodies in Wales which appear to him to be concerned, and any associations of employees which appear to him to be appropriate⁷.

The Auditor General for Wales must co-operate with the Audit Commission⁸ where it seems to him appropriate to do so for the efficient and effective discharge of his functions under the above provisions⁹.

1 As to the Auditor General for Wales see PARA 796. The Auditor General for Wales and the Welsh Ministers must co-operate with each other with respect to the exercise of their respective functions under the Health and Social Care (Community Health and Standards) Act 2003 s 95(2) (see **SOCIAL SERVICES AND COMMUNITY CARE**) (studies on impact of statutory provisions): Public Audit (Wales) Act 2004 s 42(4).

2 Public Audit (Wales) Act 2004 s 42(1).

3 Public Audit (Wales) Act 2004 s 42(1)(a).

4 Public Audit (Wales) Act 2004 s 42(1)(b).

5 Public Audit (Wales) Act 2004 s 42(1). As to the meaning of 'local government body in Wales' see PARA 801.

6 Public Audit (Wales) Act 2004 s 42(2). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Public Audit (Wales) Act 2004 s 42(3).

8 As to the meaning of 'Audit Commission' see PARA 823 note 17. As to the Audit Commission see PARA 744 et seq.

9 Public Audit (Wales) Act 2004 s 43.

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General for Wales/C. STUDIES, PERFORMANCE STANDARDS AND OTHER FUNCTIONS/(A) Studies and Related Functions/825. Studies at request of local government bodies in Wales.

825. Studies at request of local government bodies in Wales.

The Auditor General for Wales¹ may, at the request of a local government body in Wales², undertake or promote studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the body³.

Before making the request the body must consult any associations of employees which appear to it to be appropriate⁴.

- 1 As to the Auditor General for Wales see PARA 796.
- 2 As to the meaning of 'local government body in Wales' see PARA 801.
- 3 Public Audit (Wales) Act 2004 s 44(1).
- 4 Public Audit (Wales) Act 2004 s 44(2).

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826. Benefit administration studies for Secretary of State.

The Auditor General for Wales¹ may, at the request of the Secretary of State², conduct, or assist the Secretary of State in conducting, benefit administration studies³. Benefit administration studies are studies designed to enable recommendations to be made for improving economy, efficiency, and effectiveness and quality of performance in the discharge by one or more local authorities in Wales⁴ of functions relating to the administration of housing benefit or council tax benefit (or both)⁵.

Any information obtained in the course of a benefit administration study may be disclosed by the Auditor General for Wales to the Secretary of State for the purposes of any functions of the Secretary of State which are connected with housing benefit or council tax benefit⁶.

The Auditor General for Wales must send to the Secretary of State a copy of a report of a benefit administration study carried out by the Auditor General for Wales⁷, and the Secretary of State or the Auditor General for Wales may send a copy of the report to any local authority to which the study relates⁸. The Secretary of State may publish a report of a benefit administration study in conjunction with the Auditor General for Wales⁹.

The Auditor General for Wales may conduct, or assist the Secretary of State in conducting, a benefit administration study only if the Secretary of State has made arrangements for the payment to the Auditor General for Wales of a fee in respect of the study¹⁰.

- 1 As to the Auditor General for Wales see PARA 796.
- 2 As to the Secretary of State see PARA 96.
- 3 Public Audit (Wales) Act 2004 s 45(1).
- 4 As to the meaning of 'local authority in Wales' see PARA 801 note 3.

5 Public Audit (Wales) Act 2004 s 45(2). As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq. As to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371.

6 Public Audit (Wales) Act 2004 s 45(3)

7 Public Audit (Wales) Act 2004 s 45(4).

8 Public Audit (Wales) Act 2004 s 45(5).

9 Public Audit (Wales) Act 2004 s 45(6).

10 Public Audit (Wales) Act 2004 s 45(7). The amount of the fee must be a reasonable amount agreed between the Secretary of State and the Auditor General for Wales: s 45(8).

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827. Social security references and reports to Secretary of State.

The Auditor General for Wales¹ or an auditor² may refer to the Secretary of State³ any matter arising from an audit or study under the Public Audit (Wales) Act 2004⁴, if it appears that the matter may be relevant for the purposes of any of the functions of the Secretary of State relating to social security⁵. The Auditor General for Wales may send to the Secretary of State a copy of any public interest report of which a copy is sent to the Auditor General for Wales⁶, and which contains observations on the administration by a local authority in Wales⁷ of housing benefit or council tax benefit⁸.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 As to the Secretary of State see PARA 96.

4 Ie under the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59) in the case of the Auditor General; and Pt 2 Ch 1 (ss 12-40) in the case of an auditor.

5 See the Public Audit (Wales) Act 2004 s 51(1), (2). See generally **SOCIAL SECURITY AND PENSIONS**.

6 Ie under the Public Audit (Wales) Act 2004 s 22(5) or (6): see PARA 807.

7 As to the meaning of 'local authority in Wales' see PARA 801 note 3.

8 Public Audit (Wales) Act 2004 s 51(3). As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq. As to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371.

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828. Studies at request of educational bodies.

The Auditor General for Wales¹ may undertake studies designed to enable him to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the following educational bodies²:

- 975 (1) the governing body of an institution in Wales within the higher education sector if requested to do so by the governing body or the Higher Education Funding Council for Wales³;
- 976 (2) the governing body of an institution in Wales receiving financial support from the Higher Education Funding Council for Wales⁴ if requested to do so by the governing body or the Higher Education Funding Council for Wales⁵;
- 977 (3) a training provider⁶ receiving financial support from the Training and Development Agency for Schools⁷ where requested to do so by the training provider or the Training and Development Agency for Schools⁸;
- 978 (4) the governing body of an institution in Wales within the further education sector if requested to do so by the governing body or the National Assembly for Wales⁹;
- 979 (5) the Training and Development Agency for Schools if requested to do so by the Agency¹⁰.

The Auditor General for Wales may also, on request, give appropriate advice to certain educational bodies in Wales¹¹.

1 As to the Auditor General for Wales see PARA 796.

2 See the Government of Wales Act 1998 s 145B(1), (1A) (s 145B added by the Public Audit (Wales) Act 2004 s 4). The Government of Wales Act 1998 s 145B(1) and (1A) do not entitle the Auditor General for Wales to question the merits of the policy objectives of a body: s 145B(2) (as so added; and amended by the Education Act 2005 s 98, Sch 14 para 21(1), (4)). Where the Auditor General for Wales undertakes such a study he may, with the consent of the body that requested the study, arrange for a report containing the results of the study, and his recommendations (if any), to be laid before the National Assembly for Wales: Government of Wales Act 1998 s 145B(3) (as so added; and amended by the Education Act 2005 s 98, Sch 14 para 21(1), (5)).

3 Government of Wales Act 1998 s 145B(1), Table (as added: see note 2). As to the Higher Education Funding Council for Wales see **EDUCATION** vol 15(2) (2006 Reissue) PARA 733 et seq.

4 Ie under the Education Act 2005 s 86: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 803.

5 Government of Wales Act 1998 s 145B(1), Table (as added: see note 2).

6 As to the Training and Development Agency for Schools see **EDUCATION** vol 15(2) (2006 Reissue) PARA 784 et seq. The financial support referred to in the text is within the meaning of the Education Act 2005 Pt 3 (ss 74-100): see **EDUCATION** vol 15(2) (2006 Reissue) PARA 793 et seq.

7 Ie under the Education Act 2005 s 78: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 795.

8 Government of Wales Act 1998 s 145B(1), Table (as added: see note 2). This provision does not apply where the financial support is wholly derived from grants made to the Agency by the Secretary of State. As to the Secretary of State see PARA 96.

9 Government of Wales Act 1998 s 145B(1), Table (as added: see note 2).

10 Government of Wales Act 1998 s 145B(1A) (added by the Education Act 2005 s 98, Sch 14 para 21(1), (3)).

11 See the Government of Wales Act 1998 s 145B(4)-(7) (as added: see note 2).

General for Wales/C. STUDIES, PERFORMANCE STANDARDS AND OTHER FUNCTIONS/(A) Studies and Related Functions/829. Studies relating to registered social landlords.

829. Studies relating to registered social landlords.

The Welsh Ministers¹ and the Auditor General for Wales² may agree on one or more programmes of studies designed to enable the Auditor General for Wales to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of registered social landlords in Wales³. If a programme is agreed, the Auditor General for Wales must ensure that studies giving effect to the programme are undertaken by him or on his behalf⁴. It must be a term of every such programme that the Welsh Ministers make good to the Auditor General for Wales the full costs incurred by him in undertaking the programme⁵.

This power does not entitle the Auditor General for Wales to question the merits of the policy objectives of a registered social landlord in Wales⁶.

A person commits an offence if without reasonable excuse he fails to comply with a requirement to give assistance, information or explanation to the Auditor General for Wales⁷ in relation to such a study⁸.

The Auditor General for Wales may disclose to the Welsh Ministers information obtained by him or a person acting on his behalf in the course of a study under this section⁹.

The Auditor General for Wales may also, if he thinks it appropriate to do so, provide advice or assistance to a registered social landlord in Wales for the purpose of the exercise by the registered social landlord of its functions¹⁰.

1 As to the Welsh Ministers see PARA 97.

2 As to the Auditor General for Wales see PARA 796.

3 Government of Wales Act 1998 s 145C(1) (s 145C added by the Public Audit (Wales) Act 2004 s 5; s 145C(1) amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 48(1), (2)). 'Registered social landlord in Wales' means a body which is registered as a social landlord under the Housing Act 1996 Pt 1, Ch 1 (ss 1-7) (see **HOUSING** vol 22 (2006 Reissue) PARA 67 et seq) and mentioned in the Housing Act 1996 s 56(2)(a)-(c) (see **HOUSING** vol 22 (2006 Reissue) PARA 55); Government of Wales Act 1998 s 145C(9) (as so added).

4 Government of Wales Act 1998 s 145C(2) (as added: see note 3). Where a study is undertaken under s 145C by the Auditor General for Wales or on his behalf, he may arrange for a report containing the results of the study, and his recommendations (if any), to be laid before the National Assembly for Wales: s 145C(5).

5 Government of Wales Act 1998 s 145C(3) (as added (see note 3); amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 48(1), (3)).

6 Government of Wales Act 1998 s 145C(4) (as added: see note 3).

7 ie the requirement imposed under the Government of Wales Act 2006 Sch 8 para 17(3)(a), (b): see PARA 796.

8 Government of Wales Act 1998 s 145C(6) (as added (see note 3); amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 48(1), (4)). A person guilty of an offence under s 145C(6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 145C(7) (as added: see note 3). As to the standard scale see PARA 105 note 7.

9 Government of Wales Act 1998 s 145C(8) (as added (see note 3); amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 41, 48(1), (5)).

10 Government of Wales Act 1998 s 145D(1) (s 145D added by the Local Government and Public Involvement in Health Act 2007 s 166). See further s 145D(2)-(4) (as so added).

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(B) PERFORMANCE STANDARDS

830. Publication of information as to standards of performance.

The Auditor General for Wales¹ must give any directions² which he thinks fit for requiring relevant bodies³ to publish information⁴ relating to their activities in a financial year⁵ which will, in the opinion of the Auditor General for Wales, facilitate the making of appropriate comparisons⁶:

- 980 (1) between the standards of performance achieved by different relevant bodies in the financial year⁷; or
- 981 (2) between the standards of performance achieved by relevant bodies in different financial years⁸.

The comparisons are to be made by reference to the criteria of cost, economy, efficiency and effectiveness⁹.

If a relevant body is required by a direction under this provision to publish information in relation to a financial year, it must¹⁰:

- 982 (a) make arrangements for collecting and recording the information which secure that the information is available for publication and, so far as practicable, that everything published in pursuance of the direction is accurate and complete¹¹;
- 983 (b) publish the information in accordance with the direction and in a permitted method¹² before the end of the period of nine months starting immediately after the end of the financial year¹³; and
- 984 (c) keep a document containing any information published in pursuance of the direction available for inspection by local government electors¹⁴ for its area¹⁵.

1 As to the Auditor General for Wales see PARA 796.

2 See further PARA 831.

3 Each of these local government bodies in Wales is a relevant body for the purposes of the Public Audit (Wales) Act 2004 ss 47-49: (1) a local authority in Wales; (2) a committee of a local authority in Wales (including a joint committee of two or more local authorities in Wales); (3) a national park authority for a national park in Wales; (4) a police authority for a police area in Wales; (5) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 of that Act applies (see **FIRE SERVICES**): Public Audit (Wales) Act 2004 s 46(1). As to the meaning of 'local government body in Wales' see PARA 801. As to the meaning of 'local authority in Wales' see PARA 801 note 3, but note that for the purposes of s 46 'local authority in Wales' does not include a community council: see s 46(3). The Welsh Ministers may by order provide for ss 47-49 to have effect as if any other local government body in Wales were a relevant body for the purposes of those sections: s 46(2). At the date at which this volume states the law no such orders had been made under this section. As to the Welsh Ministers see PARA 97.

As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

4 See the Public Audit (Wales) Act 2004 s 47(1).

5 As to the meaning of 'financial year' see PARA 806 note 2.

6 Public Audit (Wales) Act 2004 s 47(2).

7 Public Audit (Wales) Act 2004 s 47(2)(a).

8 Public Audit (Wales) Act 2004 s 47(2)(b).

9 Public Audit (Wales) Act 2004 s 47(3).

10 Public Audit (Wales) Act 2004 s 47(4).

11 Public Audit (Wales) Act 2004 s 47(4)(a).

12 Ie permitted by the Public Audit (Wales) Act 2004 s 48. The relevant body may publish the information in a newspaper which is printed for sale, and circulating in its area: s 48(2). If the relevant body ensures that the distribution condition is met with respect to the information, it may publish the information in a newspaper or periodical publication which is produced and distributed by another person, other than a local authority company (ie a company under the control of a local authority), and is free of charge to the recipient: s 48(3), (5). A relevant body ensures that the distribution condition is met with respect to information if: (1) in any case, the body takes all reasonable steps to secure that a copy of a publication containing the information is distributed to each dwelling house in its area; and (2) in a case where the body considers that the information is of concern to persons carrying on business in its area, the body takes such steps as it considers reasonable and practicable to secure that a copy of a publication containing the information is also distributed to business premises in its area: s 48(4). The Local Government and Housing Act 1989 s 68(1) (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 629) (company under control of local authority) has effect for the purposes of the Public Audit (Wales) Act 2004 s 48(5) as it has effect for the purposes of the Local Government and Housing Act 1989 Pt 5 (ss 67-73): Public Audit (Wales) Act 2004 s 48(6). The Welsh Ministers may by order define 'an entity under the control of a local authority' for the purposes of s 48(3): Local Government and Public Involvement in Health Act 2007 s 218(1)(e). At the date at which this volume states the law no such order had been made.

As from a day to be appointed s 48 is amended by the Local Government and Public Involvement in Health Act 2007 s 216(2), Sch 14 para 6(1), (2) to replace the reference in the Public Audit (Wales) Act 2004 s 48(3) to a local authority company with a reference to an entity under the control of a local authority, to repeal s 48(5), (6) and to make provision with regard to entities under the control of a local authority in the new s 48(5)-(9). At the date at which this volume states the law no such day had been appointed.

13 Public Audit (Wales) Act 2004 s 47(4)(b). The Welsh Ministers may by order vary this period: s 47(5). The period specified in an order under s 47(5) must not be longer than nine months starting immediately after the end of the financial year in question: s 47(6). At the date at which this volume states the law no such orders had been made under this section.

14 As to the meaning of 'local government elector' see PARA 813 note 1.

15 Public Audit (Wales) Act 2004 s 47(4)(c). A local government elector for the area of a relevant body may at all reasonable times and without payment, inspect and make copies of the whole or any part of a document kept available for inspection by the body under s 47(4)(c), and may require copies of the whole or part of any such document to be delivered to him on payment of a reasonable sum for each copy: s 47(7). A person who has custody of a document kept available for inspection under s 47(4)(c) commits an offence if he obstructs a person in the exercise of his rights in this regard, or he refuses to comply with a requirement to provide a copy of the document: s 47(8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 47(9). As to the standard scale see PARA 105 note 7.

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831. Directions requiring publication of information about standards of performance.

A direction given by the Auditor General for Wales¹ requiring the publication of information must²:

- 985 (1) identify the financial year³ or years in relation to which the information is to be published⁴;
- 986 (2) specify or describe the activities to which the information is to relate⁵; and
- 987 (3) make provision as to the matters to be contained in the information and as to the form in which it is to be published⁶.

A direction may be given so as to apply either to all relevant bodies⁷ or to all relevant bodies of a description specified in the direction, and may be varied or revoked by a subsequent direction⁸.

Before giving a direction which imposes a new requirement on a relevant body as to the publication of any information⁹, the Auditor General for Wales must consult any associations of relevant bodies he thinks fit, and any other persons he thinks fit¹⁰. A direction imposing a new requirement on a relevant body as to the publication of any information must not be given later than the 31 December in the financial year which precedes the relevant financial year¹¹.

If the Auditor General for Wales gives a direction¹², he must: (a) publish the direction in the manner he considers appropriate for bringing it to the attention of members of the public¹³; and (b) send a copy of the direction to every relevant body on which duties are imposed by virtue of the direction¹⁴.

1 le under the Public Audit (Wales) Act 2004 s 47: see PARA 830. As to the Auditor General for Wales see PARA 796.

2 Public Audit (Wales) Act 2004 s 49(1)

3 As to the meaning of 'financial year' see PARA 806 note 2.

4 Public Audit (Wales) Act 2004 s 49(1)(a).

5 Public Audit (Wales) Act 2004 s 49(1)(b).

6 Public Audit (Wales) Act 2004 s 49(1)(c).

7 As to the meaning of 'relevant body' see PARA 830 note 3.

8 Public Audit (Wales) Act 2004 s 49(2).

9 References in the Public Audit (Wales) Act 2004 s 49 to the imposition of a new requirement on a relevant body as to the publication of information are to: (1) the imposition of a requirement by the first direction under s 47 (see PARA 830) to apply to the body; (2) any subsequent extension of or addition to: (a) the matters to be contained in the information which the body is required to publish in relation to a financial year in pursuance of directions under s 47; or (b) the activities to which any such information is to relate: s 49(7).

10 Public Audit (Wales) Act 2004 s 49(3).

11 Public Audit (Wales) Act 2004 s 49(4). The relevant financial year is the financial year in relation to which the information is to be published: s 49(5).

12 le under the Public Audit (Wales) Act 2004 s 47: see PARA 830.

13 Public Audit (Wales) Act 2004 s 49(6)(a).

14 Public Audit (Wales) Act 2004 s 49(6)(b).

(C) DATA MATCHING

832. Power to conduct data matching exercises.

The Auditor General for Wales¹ may conduct data matching exercises² or arrange for them to be conducted on his behalf³, exercisable for the purpose of assisting in the prevention and detection of fraud⁴. That assistance may, but need not, form part of an audit⁵.

A data matching exercise may not be used to identify patterns and trends in an individual's characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future⁶.

The Auditor General for Wales must prepare, and keep under review, a code of practice with respect to data matching exercises⁷, and regard must be had to the code in conducting and participating in any such exercise⁸.

He must lay a copy of the code, and of any alterations made to the code, before the National Assembly for Wales⁹, and from time to time publish the code as for the time being in force¹⁰.

1 As to the Auditor General for Wales see PARA 796.

2 A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends): Public Audit (Wales) Act 2004 s 64A(2) (as added: see note 3). In the Public Audit (Wales) Act 2004 Pt 3A (ss 64A-64H), reference to a data matching exercise is to an exercise conducted or arranged to be conducted under the Public Audit (Wales) Act 2004: Public Audit (Wales) Act 2004 s 64A(6) (as so added).

3 Public Audit (Wales) Act 2004 s 64A(1) (ss 64A, 64G, 64H added by the Serious Crime Act 2007 s 73, Sch 7, Pt 2, para 4).

4 Public Audit (Wales) Act 2004 s 64A(3) (as added: see note 3).

The Secretary of State may by order amend the Public Audit (Wales) Act 2004 Pt 3A (ss 64A-64H) to add any of the following purposes to the purposes for which data matching exercises may be conducted, or to modify the application of those provisions in relation to a purpose so added: Public Audit (Wales) Act 2004 s 64H(1) (as so added). The purposes which may be added are: (1) to assist in the prevention and detection of crime (other than fraud) in or with respect to Wales; (2) to assist in the apprehension and prosecution of offenders in or with respect to Wales; (3) to assist in the recovery of debt owing to Welsh public bodies: s 64H(2) (as so added). Before making such an order the Secretary of State must consult the Auditor General for Wales: s 64H(4) (as so added). An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit: s 64H(5) (as so added). 'Welsh public body' means a public body (see PARA 801 note 2) whose functions relate exclusively to Wales or to an area of Wales: s 64H(7) (as so added). At the date at which this volume states the law no such orders had been made under this section. As to the Secretary of State see PARA 96.

5 Public Audit (Wales) Act 2004 s 64A(4) (as added: see note 3).

6 Public Audit (Wales) Act 2004 s 64A(5) (as added: see note 3).

7 Public Audit (Wales) Act 2004 s 64G(1) (as added: see note 3). Before preparing or altering the code, the Auditor General for Wales must consult the bodies mentioned in the Public Audit (Wales) Act 2004 s 64B(2) (see PARA 833), the Information Commissioner and such other bodies or persons as the Auditor General for Wales thinks fit: s 64G(3) (as so added). As to the Information Commissioner see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 518 et seq.

8 Public Audit (Wales) Act 2004 s 64G(2) (as added: see note 3).

9 Public Audit (Wales) Act 2004 s 64G(4)(a) (as added: see note 3).

10 Public Audit (Wales) Act 2004 s 64G(4)(b) (as added: see note 3).

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833. Provision of data and fees.

The Auditor General for Wales¹ may require any local government body in Wales², Welsh NHS body³, and any officer or member of such a body, to provide him or a person acting on his behalf with such data (and in such form) as he or that person may reasonably require for the purpose of conducting data matching exercises⁴. A person who without reasonable excuse fails to comply with such a requirement⁵ is guilty of an offence and liable on summary conviction to a fine⁶.

If the Auditor General for Wales thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to this requirement⁷, the data may be disclosed to him or a person acting on his behalf⁸. Such a disclosure does not breach any obligation of confidence owed by a person making the disclosure, or any other restriction on the disclosure of information (however imposed)⁹.

Data matching exercises may include data provided by a body or person outside England and Wales¹⁰.

The Auditor General for Wales must prescribe a scale or scales of fees in respect of data matching exercises¹¹. A body required¹² to provide data for a data matching exercise must pay to the Auditor General the fee applicable to that exercise in accordance with the appropriate scale¹³. However, if it appears to the Auditor General that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, he may charge the body a fee which is larger or smaller than the fee generally applicable¹⁴.

In addition to this power, the Auditor General may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Auditor General and that body or person¹⁵.

If the Welsh Ministers¹⁶ consider it necessary or desirable to do so, they may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales of fees prescribed by the Auditor General and, if they do so, references in this section to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Welsh Ministers¹⁷.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 As to the meaning of 'Welsh NHS body' see PARA 799 note 2.

4 See the Public Audit (Wales) Act 2004 s 64B(1), (2) (ss 64B, 64C, 64F, 64H added by the Serious Crime Act 2007 s 73, Sch 7, Pt 2, para 4). As to data matching exercises see PARA 832 note 2.

The Secretary of State may by order amend the Audit Commission Act 1998 Pt 3A (ss 64A-64H) (see PARA 832 et seq): (1) to add a Welsh public body to the list of bodies in s 64B(2); (2) to modify the application of this Part in relation to a body so added; (3) to remove a body from that list: s 64H(3) (as so added). An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit: s 64H(4) (as so added). For these purposes 'Welsh public body' means a public body whose functions relate exclusively to Wales: s 64H(5) (as so added). As to the meaning of 'public body' see PARA 801 note 2.

At the date at which this volume states the law no such orders had been made under this section. As to the Secretary of State see PARA 96.

- 5 le under the Public Audit (Wales) Act 2004 s 64B(1)(b): see the text to notes 1-4.
- 6 See the Public Audit (Wales) Act 2004 s 64B(3) (as added: see note 4). A person is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence: s 64B(3)(a), (b) (as so added). Any expenses incurred by the Auditor General for Wales in connection with proceedings for an offence under s 64B(3) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body: s 64B(3) (as so added). As to the standard scale see PARA 105 note 7.
- 7 le not subject to the Public Audit (Wales) Act 2004 s 64B: see the text and notes 1-6.
- 8 Public Audit (Wales) Act 2004 s 64C(1) (as added: see note 4).
- 9 Public Audit (Wales) Act 2004 s 64C(2) (as added: see note 4). However, nothing in s 64C authorises a disclosure which contravenes the Data Protection Act 1998 (see **CONFIDENCE AND DATA PROTECTION**), or is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506 et seq): Public Audit (Wales) Act 2004 s 64C(3) (as so added). Nor may data be so disclosed if the data comprise or include patient data: s 64C(4) (as so added). 'Patient data' means data relating to an individual which are held for medical purposes (within the meaning of the National Health Service Act 2006 s 251 (see **HEALTH SERVICES** vol 54 (2008) PARA 54)) and from which the individual can be identified: Public Audit (Wales) Act 2004 s 64C(5) (as so added). Section 32C does not limit the circumstances in which data may be disclosed apart from this section: s 64C(6) (as so added).
- 10 Public Audit (Wales) Act 2004 s 64C(7) (as added: see note 4).
- 11 Public Audit (Wales) Act 2004 s 64F(1) (as added: see note 4).
- 12 le required under the Public Audit (Wales) Act 2004 s 64B(1): see the text and notes 1-4.
- 13 Public Audit (Wales) Act 2004 s 64F(2) (as added: see note 4). Before prescribing a scale of fees under this section, the Auditor General for Wales must consult: (1) the bodies mentioned in s 64B(2) (see the text and notes 1-4); and (2) such other bodies or persons as the Commission thinks fit: s 64F(4).
- 14 Public Audit (Wales) Act 2004 s 64F(3) (as added: see note 4).
- 15 Public Audit (Wales) Act 2004 s 64F(8) (as added: see note 4).
- 16 As to the Welsh Ministers see PARA 97.
- 17 Public Audit (Wales) Act 2004 s 64F(5) (as added: see note 4). Before making any regulations under subsection (5), the Welsh Ministers must consult: (1) the Auditor General for Wales; and (2) such other bodies or persons as he thinks fit: s 64F(6).

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834. Disclosure of results and publication.

Information relating to a particular body or person obtained by or on behalf of the Auditor General for Wales¹ for the purpose of conducting a data matching exercise², or the results of any such exercise, may be disclosed by or on behalf of the Commission if the disclosure is³:

- 988 (1) for or in connection with a purpose for which the data matching exercise is conducted⁴;
- 989 (2) to a relevant body⁵ (or a related party⁶) for or in connection with a function of that body corresponding or similar to the functions of an auditor with regard to

audits and accounts of public bodies⁷, or the functions of the Auditor General for Wales in relation to Welsh NHS bodies⁸ or data matching⁹; or
 990 (3) in pursuance of a duty imposed by or under a statutory provision¹⁰.

Information so disclosed¹¹ may not be further disclosed except¹²:

- 991 (a) for or in connection with the purpose for which it was disclosed under head (1) or the function for which it was disclosed under head (2)¹³;
- 992 (b) for the investigation or prosecution of an offence¹⁴; or
- 993 (c) in pursuance of a duty imposed by or under a statutory provision¹⁵.

Except as authorised above¹⁶, a person who discloses relevant information is guilty of an offence and liable on conviction to imprisonment, a fine or both¹⁷.

Nothing in the above provisions prevents the Auditor General for Wales from publishing a report on a data matching exercise (including on the results of the exercise)¹⁸. However, the report may not include information relating to a particular body or person if¹⁹:

- 994 (i) the body or person is the subject of any data included in the data matching exercise²⁰;
- 995 (ii) the body or person can be identified from the information²¹; and
- 996 (iii) the information is not otherwise in the public domain²².

A report so published may be published in such manner as the Auditor General considers appropriate for bringing it to the attention of those members of the public who may be interested²³.

Provision with regard to publication²⁴ does not affect any powers of an auditor or the Auditor General where the data matching exercise in question forms part of an audit²⁵.

1 As to the Auditor General for Wales see PARA 796.

2 As to data matching exercises see PARA 832 note 2.

3 Public Audit (Wales) Act 2004 s 64D(1), (2) (ss 64D, 64E added by the Serious Crime Act 2007 s 73, Sch 7, Pt 2, para 4). The Public Audit (Wales) Act 2004 s 64 (see PARA 799) does not apply to information to which s 64D applies: s 64D(9) (as so added).

4 Public Audit (Wales) Act 2004 s 64D(2)(a) (as added: see note 3). If the data used for a data matching exercise include patient data s 64D(2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body: s 64D(5)(a). As to the meaning of 'patient data' see PARA 833 note 9; definition applied by the Public Audit (Wales) Act 2004 s 64D(6)(a) (as so added). 'Relevant NHS body' means: (1) a Welsh NHS body (see PARA 799 note 2); (2) a health service body as defined in the Audit Commission Act 1998 s 53(1) (see PARA 745 note 8); (3) an NHS body as defined in the Community Care and Health (Scotland) Act 2002 s 22(1); (4) a body to which the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265, art 90 applies: Public Audit (Wales) Act 2004 s 64D(6)(b) (as so added).

5 The bodies are: (1) the Auditor Commission; (2) the Auditor General for Scotland; (3) the Accounts Commission for Scotland; (4) Audit Scotland; (5) the Comptroller and Auditor General for Northern Ireland; and (6) a person designated as a local government auditor under the Local Government (Northern Ireland) Order 2005, SI 2005/1968, art 4: Public Audit (Wales) Act 2004 s 64D(3) (as added: see note 3). As to the Audit Commission see PARA 744 et seq.

6 'Related party', in relation to a body mentioned in the Audit Commission s 64D(3), means: (1) a body or person acting on its behalf; (2) a body whose accounts are required to be audited by it or by a person appointed by it; (3) a person appointed by it to audit those accounts: s 64D(4) (as added: see note 3).

7 Ie under the Public Audit (Wales) Act 2004 Pt 2, Ch 1 (ss 12-40): see PARA 796 et seq.

8 le under the Public Audit (Wales) Act 2004 Pt 3 (ss 60-64): see PARA 799.

9 Public Audit (Wales) Act 2004 s 64D(2)(b) (as added: see note 3). The functions of the Commission referred to in the text are those under the Public Audit (Wales) Act 2004 Pt 3A (ss 64A-64G): see PARA 832 et seq.

If the data used for a data matching exercise include patient data s 64D(2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body: s 64D(5)(a). As to the meaning of 'patient data' see PARA 833 note 9; definition applied by the Public Audit (Wales) Act 2004 s 64D(6)(a).

10 Public Audit (Wales) Act 2004 s 64D(2)(c) (as added: see note 3). 'Statutory provision' means a provision contained in or having effect under an enactment: s 59(8); definition applied by s 64D(10).

11 le disclosed under the Public Audit (Wales) Act 2004 s 64D(2): see the text and notes 1-10.

12 Public Audit (Wales) Act 2004 s 64D(7) (as added: see note 3).

13 Public Audit (Wales) Act 2004 s 64D(7)(a) (as added: see note 3).

14 Public Audit (Wales) Act 2004 s 64D(7)(b) (as added: see note 3). Section 64D(7)(b) applies in so far as the disclosure does not fall within s 64D(7)(a).

15 Public Audit (Wales) Act 2004 s 64D(7)(c) (as added: see note 3).

16 le under the Public Audit (Wales) Act 2004 s 64D(2), (7): see the text and notes 1-15.

17 Public Audit (Wales) Act 2004 s 64D(8) (as added: see note 3). A person guilty of such an offence is liable on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both (s 64D(8) (a) (as so added)), or on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both (s 64D(8)(b) (as so added)). As to the statutory maximum see PARA 794 note 29.

18 Public Audit (Wales) Act 2004 s 64E(1) (as added: see note 3).

19 Public Audit (Wales) Act 2004 s 64E(2) (as added: see note 3).

20 Public Audit (Wales) Act 2004 s 64E(2)(a) (as added: see note 3).

21 Public Audit (Wales) Act 2004 s 64E(2)(b) (as added: see note 3).

22 Public Audit (Wales) Act 2004 s 64E(2)(c) (as added: see note 3).

23 Public Audit (Wales) Act 2004 s 64E(3) (as added: see note 3).

24 le under the Public Audit (Wales) Act 2004 s 64E.

25 Public Audit (Wales) Act 2004 s 64E(1) (as added: see note 3). The audit referred to in the text is an audit performed under Pt 2 (ss 12-59), or 3 (ss 60-64): see PARA 796 et seq.

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D. PROVISION AND PUBLICATION OF INFORMATION

835. Rights of access to documents and information.

The Auditor General for Wales¹ has a right of access at all reasonable times to every document relating to a local government body in Wales² which appears to him necessary for the purposes of his functions under the Public Audit (Wales) Act 2004³. The documents relating to a body to which this right applies may include in particular⁴:

- 997 (1) a document which is held or controlled by a person who has received financial assistance from the body by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate⁵;
- 998 (2) a document which is held or controlled by a person who has supplied goods or services to the body in pursuance of a contract to which the body was party or who has supplied goods or services in pursuance of a relevant sub-contract⁶;
- 999 (3) a document of a description specified in an order made by the Welsh Ministers⁷.

The Auditor General for Wales may require a person whom he thinks has certain information⁸ to give him any assistance, information and explanation which the Auditor General for Wales thinks necessary for the purposes of his functions under the Public Audit (Wales) Act 2004⁹, and to attend before him in person to give the assistance, information or explanation, or to produce any document which is held or controlled by the person and to which the right of access applies¹⁰. A person commits an offence if without reasonable excuse he fails to comply with these requirements¹¹.

For the purpose of assisting the Auditor General for Wales to maintain proper standards in the auditing of accounts of local government bodies in Wales, the Auditor General for Wales may require a local government body in Wales to make available for inspection by him, or on his behalf, the accounts of the body, and any other documents relating to the body which might reasonably be required by an auditor¹² for the purposes of an audit¹³.

Every local government body in Wales must provide the Auditor General for Wales with every facility and all information which he may reasonably need for the purposes of his functions¹⁴.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'local government body in Wales' see PARA 801.

3 Public Audit (Wales) Act 2004 s 52(1). The functions referred to in the text are those under Pt 2 (ss 12-59).

4 Public Audit (Wales) Act 2004 s 52(2).

5 Public Audit (Wales) Act 2004 s 52(2)(a).

6 Public Audit (Wales) Act 2004 s 52(2)(b). For the purposes of s 52(2)(b) a contract is a relevant sub-contract if its performance fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the body in another contract: Public Audit (Wales) Act 2004 s 52(3).

7 Public Audit (Wales) Act 2004 s 52(2)(c). Before making an order under s 52(2)(c) the Welsh Ministers must consult the Auditor General for Wales, and any associations of local authorities in Wales which appear to it to be concerned: s 52(8). At the date at which this volume states the law no such orders had been made under this section. As to the meaning of 'local authority in Wales' see PARA 801 note 3. As to the Welsh Ministers see PARA 97.

8 The information which relates to: (1) a local government body in Wales; (2) a document to which the right conferred by the Public Audit (Wales) Act 2004 s 52(1) (see the text and notes 1-3) applies; (3) a person who holds or controls such a document: s 52(5).

9 Public Audit (Wales) Act 2004 s 52(4)(a). The function referred to in the text are those under Pt 2 (ss 12-59).

10 Public Audit (Wales) Act 2004 s 52(4)(b).

11 See the Public Audit (Wales) Act 2004 s 53(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and to an additional fine not exceeding £20 for each day on which the offence continues after he has been convicted of it: s 53(2). If a person is convicted of an offence under s 53(1), and expenses are incurred by the Auditor General for Wales in connection with proceedings for the offence, the expenses may be recovered from the convicted person or an appropriate person, to the extent that they are not recovered from any other source: s 53(3), (4). An appropriate person is a

person who controlled the document referred to in s 52(5) at the time the requirement was imposed: s 53(5). As to the standard scale see PARA 105 note 7.

12 As to the meaning of 'auditor' see PARA 801 note 15.

13 Public Audit (Wales) Act 2004 s 52(6).

14 Public Audit (Wales) Act 2004 s 52(7). The functions referred to in the text are those under Pt 2 (ss 12-59).

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836. Restriction on disclosure of information.

No information relating to a particular body or other person obtained by the Auditor General for Wales¹ or an auditor², or by a person acting on their behalf, pursuant to the accounts and audits of local government bodies in Wales³ or best value⁴, or in the course of an audit, study or inspection under those provisions, or in the course of a study relating to registered social landlords⁵ may be disclosed except⁶:

- 1000 (1) with the consent of the body or person to whom the information relates⁷;
- 1001 (2) for the purposes of any functions of the Auditor General for Wales or an auditor pursuant to the accounts and audits of local government bodies in Wales⁸ or best value⁹;
- 1002 (3) for the purposes of the functions of the Secretary of State¹⁰ relating to social security¹¹;
- 1003 (4) for the purposes of the functions of the Public Services Ombudsman for Wales with regard to the conduct of local government members and employees¹²;
- 1004 (5) for the purposes of any functions of the Welsh Ministers which are connected with the discharge of social services functions¹³ by local authorities in Wales¹⁴;
- 1005 (6) for the purposes of any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere¹⁵;
- 1006 (7) for the purposes of any criminal proceedings which have been or may be initiated, whether in the United Kingdom or elsewhere¹⁶;
- 1007 (8) for the purposes of the initiation or bringing to an end of any such investigation or proceedings¹⁷;
- 1008 (9) for the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end¹⁸.

A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000¹⁹, may disclose such information under certain circumstances²⁰.

A person commits an offence if he discloses information in contravention of these provisions²¹. The Secretary of State may by order made by statutory instrument amend or repeal the preceding provisions²².

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'auditor' see PARA 801 note 15.

- 3 le the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59).
- 4 le the Local Government Act 1999 Pt 1 (ss 1-29): see PARA 688 et seq.
- 5 le a study under the Government of Wales Act 1998 s 145C: see PARA 829.
- 6 See the Public Audit (Wales) Act 2004 s 54(1), (2). As from a day to be appointed the Public Audit (Wales) Act 2004 s 54(1), (2) is amended by the Local Government (Wales) Measure 2009 Sch 1 paras 34, 36 to add references to a Welsh improvement authority for the purposes of the Local Government (Wales) Measure 2009 Pt 1 (ss 1-47) (see PARA 711 et seq). At the date at which this volume states the law no such day had been appointed.
- 7 Public Audit (Wales) Act 2004 s 54(2)(a).
- 8 le the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59).
- 9 Public Audit (Wales) Act 2004 s 54(2)(b). The functions with regard to best value referred to in the text are those in the Local Government Act 1999 Pt 1 (ss 1-29): see PARA 688 et seq. See also note 6.
- 10 As to the Secretary of State see PARA 96.
- 11 Public Audit (Wales) Act 2004 s 54(2)(c). As to functions of the Secretary of State relating to social security see **SOCIAL SECURITY AND PENSIONS**.
- 12 Public Audit (Wales) Act 2004 s 54(2)(d) (amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 para 77). The functions with regard to conduct referred to in the text are those under the Local Government Act 2000 Pt III (ss 49-83): see PARA 232 et seq.
- 13 For these purposes 'social services functions' has the same meaning as in the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): Public Audit (Wales) Act 2004 s 54(5). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 14 Public Audit (Wales) Act 2004 s 54(2)(e). As to the meaning of 'local authority in Wales' see PARA 801 note 3. As to the Welsh Ministers see PARA 97.
- 15 Public Audit (Wales) Act 2004 s 54(2)(g). See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 16 Public Audit (Wales) Act 2004 s 54(2)(h). See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 17 Public Audit (Wales) Act 2004 s 54(2)(i). See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 18 Public Audit (Wales) Act 2004 s 54(2)(j). See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.
- 19 See **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 note 2.
- 20 See the Public Audit (Wales) Act 2004 s 54(ZA) (s 24(ZA)-(ZD) added by the Local Government and Public Involvement in Health Act 2007 s 167(1), (2)). A person referred to in the text may also disclose such information: (1) in accordance with the Government of Wales Act 1998 s 145C(5) or (8) (see PARA 829); or (2) in any other circumstances, except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment: Public Audit (Wales) Act 2004 s 54(2ZA) (as so added). An auditor who does not fall within s 54(2ZA), or a person acting on his behalf, may also disclose such information except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the auditor by or under an enactment: s 54(2ZB). A person who does not fall within s 54(2ZA) or (2ZB) may also disclose such information in accordance with consent given by the Auditor General for Wales or an auditor: s 54(2ZC). Consent for the purposes of s 54(2ZC) must be obtained in accordance with the following provisions: s 54ZA(1) (s 54ZA added by the Local Government and Public Involvement in Health Act 2007 s 167(1), (6)). A person requesting consent (the 'applicant') must make a request for consent which: (a) is in writing; (b) states the name of the applicant and an address for correspondence; (c) describes the information in relation to which consent is requested; and (d) identifies the person to whom the information will be disclosed: Public Audit (Wales) Act 2004 s 54ZA(2) (as so added). Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Auditor General for Wales or an auditor by or under an enactment: s 54ZA(3) (as so added). Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing: s 54ZA(4) (as so added). A refusal (or, where the refusal is oral, the confirmation of the refusal) must contain the reasons for the refusal: s 54ZA(5) (as so added). A person to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received: s 54ZA(6) (as so added). 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank

holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom: s 54ZA(7) (as so added). As to the meaning of 'United Kingdom' see PARA 116 note 18.

21 Public Audit (Wales) Act 2004 s 54(3) (amended by the Local Government and Public Involvement in Health Act 2007 s 167(1), (4)). A person guilty of an offence under s 54(3) is liable on summary conviction to a fine not exceeding the statutory maximum: Public Audit (Wales) Act 2004 s 54(4) (amended by the Local Government and Public Involvement in Health Act 2007 ss 167(1), (5), 241, Sch 18, Pt 13).

22 Public Audit (Wales) Act 2004 s 54(6). An order under s 54(6) may be made only if: (1) the Audit Commission Act 1998 s 49 (restriction on disclosure of information: see PARA 794) has been amended or repealed in the same session as that in which the Public Audit (Wales) Act 2004 is passed or in any later session; (2) the Secretary of State thinks that the amendments or repeals to be made by the order under s 54(6) will (subject to head (3)) have the same effect as the amendments to or repeal of the Audit Commission Act 1998 s 49; (3) the order would not have the effect of imposing any further restriction on the disclosure of information under the Public Audit (Wales) Act 2004 s 54: s 54(7). As to orders made under s 54(6) see the Public Audit (Wales) Act 2004 (Relaxation of Restriction on Disclosure) Order 2005, SI 2005/1018.

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837. Supply of benefit information to Auditor General for Wales.

The Secretary of State¹ may supply to the Auditor General for Wales² any information held by him which relates to housing benefit or council tax benefit³, and appears to the Secretary of State to be relevant to the exercise of any function of the Auditor General for Wales⁴.

1 As to the Secretary of State see PARA 96.

2 As to the Auditor General for Wales see PARA 796.

3 As to housing benefit see **HOUSING** vol 22 (2006 Reissue) PARA 140 et seq. As to council tax benefit see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 371.

4 Public Audit (Wales) Act 2004 s 55. As to the functions of the Auditor General for Wales, see the Government of Wales Act 2006 Sch 8; and PARA 796.

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838. Publication of information by Auditor General for Wales.

The Auditor General for Wales¹ may publish information with respect to any of these:

- 1009 (1) the making by an auditor² of a public interest report³;
- 1010 (2) the subject matter of a public interest report⁴;
- 1011 (3) the decision made and other action taken by a body in response to the receipt of a public interest report or to anything in such a report⁵;
- 1012 (4) a contravention by a body of regulations made under the Public Audit (Wales) Act 2004⁶;
- 1013 (5) a contravention by a body of an obligation imposed on it⁷.

The information that may be published under head (1), (2) or (3) above does not include information excluded⁸ from an approved summary⁹.

The Auditor General for Wales must inform a body before publishing the information relating to it¹⁰. Information must be published in any manner which the Auditor General for Wales considers appropriate for bringing the information to the attention of members of the public who may be interested in it¹¹.

1 As to the Auditor General for Wales see PARA 796.

2 As to the meaning of 'auditor' see PARA 801 note 15.

3 Public Audit (Wales) Act 2004 s 56(1)(a). A public interest report is a report under the Public Audit (Wales) Act 2004 s 22: see PARA 807.

4 Public Audit (Wales) Act 2004 s 56(1)(b).

5 Public Audit (Wales) Act 2004 s 56(1)(c).

6 Public Audit (Wales) Act 2004 s 56(1)(d). The regulations referred to in the text are those made under the Public Audit (Wales) Act 2004 s 39.

7 Public Audit (Wales) Act 2004 s 56(1)(e). The reference to an obligation imposed on a body is to an obligation imposed under s 47(4): see PARA 830.

8 le under the Public Audit (Wales) Act 2004 s 26(5): see PARA 812.

9 Public Audit (Wales) Act 2004 s 56(2). The reference to an approved summary is to a summary published under s 26(4)(c): see PARA 812.

10 Public Audit (Wales) Act 2004 s 56(3).

11 Public Audit (Wales) Act 2004 s 56(4).

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(5) MALADMINISTRATION

(i) Commission for Local Administration in England

839. The Commission for Local Administration in England.

For the purpose of conducting investigations into complaints of maladministration¹ alleged against local authorities² and certain other public bodies³, a commission has been established, namely the Commission for Local Administration in England⁴. The Parliamentary Commissioner for Administration is a member of the commission⁵. Appointments to the office of commissioner are made by Her Majesty on the recommendation of the Secretary of State⁶. The commission may also include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations⁷. 'Local commissioner' means a person, other than the Parliamentary Commissioner for Administration or an advisory member, who is a member of the commission⁸.

A person is disqualified for office as a local commissioner if he is disqualified for being elected, or being, a member of any of the authorities subject to investigation⁹ or if he is a member of any of those authorities¹⁰. The acts and proceedings of a person appointed as a local commissioner and acting in that office are, notwithstanding his disqualification, as valid and effectual as if he had been qualified¹¹.

A commissioner may be appointed to serve either as a full-time or as a part-time commissioner¹². He may be relieved of office by Her Majesty at his own request or removed from office on grounds of incapacity or misbehaviour¹³.

The Secretary of State must designate two of the local commissioners for England as chairman and vice-chairman respectively of the Commission for Local Administration in England¹⁴.

The Commission for Local Administration in England must divide the matters which may be investigated¹⁵ into such categories as it considers appropriate, and allocate, or make arrangements for allocating responsibility for each category of matter to one or more of the local commissioners¹⁶. The commission must make arrangements for local commissioners to deal with matters for which they are not so responsible¹⁷.

A local commissioner may not at any time conduct a case arising in an area if it is wholly or partly within an area for which an authority subject to investigation¹⁸ is responsible and, within the five years ending at that time, the local commissioner has been a member of that authority, has taken action on behalf of that authority in the exercise of any of its functions, or has taken action which, by virtue of an enactment, is treated as having been taken by that authority in the exercise of any of its functions¹⁹.

The commission may, after consultation with the representative persons and authorities concerned²⁰, provide to the authorities, or any of the authorities to which the investigation provisions apply²¹, such advice and guidance about good administrative practice as appears to the commission to be appropriate, and may arrange for it to be published for the information of the public²². The commission must publish information about the procedures for making complaints²³. The local commissioners and the commission are subject to specific requirements in respect of annual reports and reviews²⁴.

The commission may determine its own procedure, including the quorum necessary for its meetings²⁵. The validity of any proceedings of the commission is not affected by any vacancy among the members of the commission or by any defect in the appointment of any member²⁶.

1 le for the purpose of conducting investigations in accordance with the Local Government Act 1974 Pt III (ss 23-34). As to the meaning of 'maladministration' see PARA 850. As to misfeasance in public office see **TORT** vol 45(2) (Reissue) PARAS 502, 844-846. As to the conduct of members of local authorities see PARA 230 et seq.

2 As to the meaning of 'local authority' see PARA 23.

3 See PARA 853.

4 See the Local Government Act 1974 s 23(1)(a). The 'commission' means the Commission for Local Administration in England: s 34(1). See further **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 46 et seq. The Local Government Act 1972 s 269 (see PARA 1 note 1), which relates to the meanings of 'England' and 'Wales' in Acts passed after 1 April 1974, applies to the Local Government Act 1974 Pt III as if it had been passed after that date: s 34(2). The commission is a body corporate and the common seal of it is authenticated by the signature of a member of the commission, or of some other person authorised in that behalf by it: Sch 4 para 5(3) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (7)(c)). There is to be defrayed out of money provided by Parliament any sums required for the payment of grants under the Local Government Act 1974 or any other expenses of a Minister under that Act: s 44.

5 Local Government Act 1974 s 23(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8(1), (3)). The Parliamentary Commissioner for Administration is appointed under the Parliamentary Commissioner Act 1967 s 1 with powers to investigate maladministration alleged against government departments and certain other public bodies, but not local authorities: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to consultation between the respective commissioners see PARA 864.

6 Local Government Act 1974 s 23(4) (amended by the Local Government and Housing Act 1989 Sch 11 para 37, Sch 12, Pt II; and the Local Government and Public Involvement in Health Act 2007 Sch 18, Pt 14). As to the authorities to which the investigation provisions (ie the provisions of the Local Government Act 1974 Pt III) apply see PARA 853.

7 Local Government Act 1974 s 23(1) (amended by the Local Government and Housing Act 1989 s 22(1)-(3); and the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8(1), (2)(b)).

8 Local Government Act 1974 s 23(3) (amended by the Local Government and Housing Act 1989 s 22(3); and the Government of Wales Act 1998 Sch 12 para 12(3)).

9 Ie any of the authorities mentioned in the Local Government Act 1974 s 25(1): see PARA 853.

10 Local Government Act 1974 Sch 4 para 1(1) (amended by the Local Government and Public Involvement in Health Act 2007 s 179(1), (2)(a)). Appointment as a member of a commission is a disqualification for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1, Pt II; and **PARLIAMENT** vol 78 (2010) PARA 908.

11 Local Government Act 1974 Sch 4 para 1(3) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (2), Sch 7).

12 Local Government Act 1974 s 23(5) (substituted by the Local Government and Public Involvement in Health Act 2007 s 168(1), (4)). With the commissioner's consent, the terms of the appointment may be varied as to whether it is full-time or part-time: Local Government Act 1974 s 23(5). A person appointed to be a commissioner is not eligible for re-appointment: s 23(6A) (added by the Local Government and Public Involvement in Health Act 2007 s 168(1), (6)).

13 Local Government Act 1974 s 23(6) (amended by the Local Government and Housing Act 1989 Sch 12, Pt II; and the Local Government and Public Involvement in Health Act 2007 Sch 18, Pt 14).

14 Local Government Act 1974 s 23(7) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8(1), (6), Sch 7).

15 Ie under the Local Government Act 1974 Pt III.

16 Local Government Act 1974 s 23(8A) (added by the Local Government and Public Involvement in Health Act 2007 s 169(1)).

17 Local Government Act 1974 s 23(10)(a) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8(1), (8)(b), (6), Sch 7; and the Local Government and Public Involvement in Health Act 2007 s 169(1), (3)). As to the procedure for investigations and reports on investigations see PARAS 859-860.

18 Ie an authority mentioned in the Local Government Act 1974 s 25(1) (see PARA 853).

19 Local Government Act 1974 Sch 4 para 1(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 179(1), (2)(a)).

20 For the purposes of the Local Government Act 1974 s 23(12A), the representative persons and authorities concerned are such of the persons appearing to the commission to represent authorities, and in the case of authorities that are not so represented, such of the authorities as the commission thinks appropriate: see s 23(12B) (added by the Local Government and Housing Act 1989 s 23; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 1, 7, 8(1), (12)).

21 As to the authorities to which the investigation provisions (ie the provisions of the Local Government Act 1974 Pt III) apply see PARA 853.

22 Local Government Act 1974 s 23(12A) (added by the Local Government and Housing Act 1989 Act 1988 s 23; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 1, 7, 8(1), (11)).

23 Local Government Act 1974 s 23(10)(b) (s 23(10) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8(1), (8)(a)).

24 See PARA 842.

25 Local Government Act 1974 Sch 4 para 5(1) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (7)(a)).

26 Local Government Act 1974 Sch 4 para 5(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (7)(b)).

UPDATE

839 The Commission for Local Administration in England

NOTE 19--Local Government Act 1974 Sch 4 para 1(2C), (2D) added: Apprenticeships, Skills, Children and Learning Act 2009 s 223(2) (in force in part: see SI 2010/303, SI 2010/1151).

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840. Remuneration, staff and accommodation of commission.

The commission¹ must pay to or in respect of its local commissioners², their officers and advisory members³ such amounts by way of remuneration, pensions, allowances or gratuities, or by way of provision for any such benefits, as the Secretary of State⁴ may determine⁵. If a person ceases to be a local commissioner or advisory member and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the commission may pay to that person a sum of such amount as the Secretary of State may determine⁶.

The commission may appoint a secretary and such other officers as it considers to be required for the discharge of its functions⁷, and must make arrangements to enable local commissioners to investigate matters, and in particular arrangements for allocating members of its staff to assist local commissioners⁸ and for providing offices and other accommodation⁹.

An officer of the commission must not be allocated to assist a local commissioner without the approval of that local commissioner¹⁰.

1 As to the Commission for Local Administration in England see PARA 839.

2 As to the meaning of 'local commissioner' see PARA 839.

3 As to advisory members see PARA 839.

4 As to the Secretary of State see PARA 96.

5 Local Government Act 1974 Sch 4 para 3(1) (Sch 4 para 3(1) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (4)(a); and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 11(1), (2)(a), Sch 18, Pt 14); Local Government Act 1974 Sch 4 para 3(3) (added by the Local Government and Housing Act 1989 s 22(5); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 8, 18, Sch 7).

6 Local Government Act 1974 Sch 4 para 3(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (5)(a); and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 11(1), (2)(b)); Local Government Act 1974 Sch 4 para 3(3).

7 Local Government Act 1974 Sch 4 para 4(1) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (5)(a)).

8 Local Government Act 1974 Sch 4 para 4(2)(a) (Sch 4 para 4(2) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (5)(b); and the Local Government and Public Involvement in

Health Act 2007 Sch 12 paras 1, 11(1), (3)(a)). However, an officer of the commission may not be allocated to assist a local commissioner without the approval of that local commissioner: Local Government Act 1974 Sch 4 para 4(3) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (5)(c)).

9 Local Government Act 1974 Sch 4 para 4(2)(b) (as amended: see note 8).

10 Local Government Act 1974 Sch 4 para 4(3) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 18(1), (2), Sch 7).

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841. Finances and estimates of expenditure.

The Secretary of State¹ must pay to the commission in respect of each financial year such amount as he determines to be the amount required for the discharge during that year of the functions of the commission². Such a determination must be approved by the Treasury³.

1 As to the Secretary of State see PARA 96.

2 Local Government Act 1972 Sch 4 para 5A(1) (Sch 4 para 5A added by the Local Government and Public Involvement in Health Act 2007 s 180).

3 Local Government Act 1972 Sch 4 para 5A(2) (as added: see note 2)

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842. Annual reviews and reports.

For each financial year every local commissioner¹ must prepare a general report on the discharge of his functions and must submit it to the commission².

The commission must prepare a general report for each financial year on the discharge of its functions and submit it to such persons as appear to the commission to represent authorities to which the investigation provisions apply³, and, in the case of such authorities as are not so represented, to those authorities⁴. The annual report must be submitted as soon as may be after the commission has received the reports for the year from local commissioners⁵, and the commission must submit copies of those reports together with its annual report⁶. The commission must arrange for the publication of the annual report and of the reports of which copies are submitted by it⁷. The commission must lay a copy of the annual report before Parliament⁸.

1 As to the meaning of 'local commissioner' see PARA 839.

2 Local Government Act 1974 s 23(11) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 8(1), 9(a), (b), Sch 7). As to the Commission for Local Administration in England see PARA 839. Any report required under the Local Government Act 1974 s 23(11) must be submitted not later than two months after the end of the year to which the report relates: s 23(11) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 8, Sch 7).

3 le the authorities to which the provisions of the Local Government Act 1974 Pt III (ss 23-34) apply: see PARA 853.

4 Local Government Act 1974 s 23A(1) (s 23A added by the Local Government and Housing Act 1989 s 25(2); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 9(1), (2)(a), (b), Sch 7; and the Local Government and Public Involvement in Health Act 2007 s 170(1), (2)).

5 le under the Local Government Act 1974 s 23(11): see the text and notes 1-2.

6 Local Government Act 1974 s 23A(2) (as added (see note 4); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 9(1), (3); and the Local Government and Public Involvement in Health Act 2007 s 170(1), (3)).

7 Local Government Act 1974 s 23A(3) (as added (see note 4); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 9(1), (4); and the Local Government and Public Involvement in Health Act 2007 s 170(1), (4)).

8 Local Government Act 1974 s 23A(3A) (added by the Local Government and Public Involvement in Health Act 2007 s 170(1), (5)).

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(ii) Public Services Ombudsman for Wales

843. The Public Services Ombudsman for Wales.

For the purpose of investigating, in relation to Wales, alleged maladministration¹ by a listed authority² in connection with relevant action³, an alleged failure in a relevant service⁴ provided by a listed authority, or an alleged failure by a listed authority to provide a relevant service, the Public Services Ombudsman for Wales has been established⁵.

The Ombudsman is to be appointed by Her Majesty on the nomination of the National Assembly for Wales⁶. The Ombudsman is a corporation sole⁷ and holds office under Her Majesty and discharges his functions on behalf of the Crown⁸. The Ombudsman is a Crown servant⁹, but service as the Ombudsman is not service in the civil service of the Crown¹⁰.

A person's term of office as the Ombudsman is seven years¹¹. A person appointed as the Ombudsman is not eligible for re-appointment¹². Her Majesty may relieve a person of office as the Ombudsman at his request, or on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office¹³. Her Majesty may remove a person from office as the Ombudsman on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so¹⁴.

If the office of the Ombudsman becomes vacant, Her Majesty may, on the nomination of the Assembly, appoint a person to act as the Ombudsman¹⁵. A person appointed to act as the Ombudsman may have held office as the Ombudsman¹⁶. A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman, unless he has already held office as the Ombudsman¹⁷. The power to appoint a person as an acting Ombudsman is not exercisable after the end of the period of two years starting with the date on which the vacancy arose¹⁸. An acting Ombudsman holds office in accordance with the terms of his appointment¹⁹. An acting Ombudsman must not hold office after the appointment of a person as the Ombudsman, or, if sooner, the end of the period of two years starting with the date on which the vacancy arose²⁰. While an acting Ombudsman holds office he is to be regarded as the Ombudsman²¹.

A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies:

- 1014 (1) he is a member of the House of Commons²²;
- 1015 (2) he is a listed authority²³;
- 1016 (3) he is a member, co-opted member, officer or member of staff of a listed authority²⁴;
- 1017 (4) he is disqualified from being a member of the Assembly²⁵;
- 1018 (5) he is disqualified from being a member of a local authority in Wales²⁶.

The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is so disqualified²⁷. If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes so disqualified he ceases to hold office on becoming so²⁸. However, the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that he is or becomes disqualified²⁹.

A person who holds office as the Ombudsman or an acting Ombudsman is disqualified from being a listed authority, or being a member, co-opted member, officer or member of staff of a listed authority, or holding a paid office³⁰ to which appointment is by a listed authority³¹, but is not disqualified from being a member of the Assembly³².

A person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified for the relevant period³³ from holding an office which is a listed authority, or being a member, co-opted member, officer or member of staff of a listed authority, or holding a paid office to which appointment is by a listed authority³⁴. However, this does not disqualify a person from:

- 1019 (a) being a member of the Assembly or the National Assembly for Wales Commission³⁵;
- 1020 (b) holding the office of presiding officer or deputy presiding officer of the Assembly or of First Minister for Wales, Welsh Minister³⁶, Counsel General to the Welsh Assembly Government or Deputy Welsh Minister³⁷;
- 1021 (c) being a member or co-opted member of a local authority in Wales³⁸;
- 1022 (d) holding the office of chairman, vice-chairman or elected mayor of a local authority in Wales³⁹.

The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as he thinks appropriate⁴⁰. In conducting an investigation in respect of a listed authority⁴¹, the Ombudsman may have regard to the extent to which the authority has complied with any applicable guidance so issued⁴².

1 As to the meaning of 'maladministration' see PARA 850.

2 As to the meaning of 'listed authority' see PARA 854 note 3.

3 'Relevant action' means (1) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service (Public Services Ombudsman (Wales) Act 2005 s 7(2)(a)); (2) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions (s 7(2)(b) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 68)); (3) in the case of a listed authority which is a person with functions conferred by regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2), action taken by the authority in the discharge of any of those functions (Public Services Ombudsman (Wales) Act 2005 s 7(2)(c)); (4) in the case of a listed authority which is a listed authority by virtue of an order under s 28(2) adding it to Sch 3, action taken by the authority in the discharge of any of its specified functions (s 7(2)(d)); (5) in any other case, action taken by the authority in the discharge of any of its administrative functions (s 7(3)(e)). 'Action' includes a failure to act: s 41(1). 'Specified functions' means the functions specified in relation

to the authority in an order under s 28(2) as falling within the Ombudsman's remit: s 7(5). An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for these purposes if the person was appointed by the authority, or the person was appointed with the consent of the authority whether as to remuneration and other terms and conditions of service or otherwise: s 7(6).

4 'Relevant service' means (1) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide; (2) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide; (3) in the case of a listed authority falling within the Public Services Ombudsman (Wales) Act 2005 s 7(3)(c) (see note 3), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned; (4) in the case of a listed authority falling within s 7(3)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions; (5) in any other case, any service which it was, at that time, the authority's function to provide: s 7(4).

5 See the Public Services Ombudsman (Wales) Act 2005 s 7(1).

6 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 1 (substituted by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (2)).

7 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 2(1).

8 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 2(2).

9 le for the purposes of the Official Secrets Act 1989 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 483 et seq).

10 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 2(3), (4).

11 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 3(1). This is subject to Sch 1 para 3(2)-(5) (see the text and notes 12-14).

12 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 3(2).

13 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 3(3) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (3)(a)).

14 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 3(4) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (3)(b)). A recommendation for the removal of a person from office as the Ombudsman may not be made unless the Assembly has resolved that the recommendation should be made, and the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats: Sch 1 para 3(5) (substituted by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (3)(c)).

15 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(1) (substituted by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (4)).

16 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(3).

17 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(4).

18 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(5).

19 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(6). This is subject to Sch 1 paras 2, 4(7) (see the text and notes 7-10, 21).

20 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(7).

21 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 4(8). This applies except for the purposes of Sch 1 paras 1, 3, 5-9: Sch 1 para 4(8).

22 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(a).

23 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(b). As to such listed authorities see PARA 854.

- 24 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(c).
- 25 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(d) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (5)). This applies except where the person is disqualified by virtue of the Public Services Ombudsman (Wales) Act 2005 Sch 1 para 6 or the Government of Wales Act 2006 s 16(1)(d) (see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 234): Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(d).
- 26 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(1)(e). This applies except where he is disqualified by virtue of Sch 1 para 6: Sch 1 para 5(1)(e).
- 27 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(2).
- 28 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(3).
- 29 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 5(4).
- 30 For these purposes, 'paid office' includes an office the holder of which is entitled only to the reimbursement of expenses: Public Services Ombudsman (Wales) Act 2005 Sch 1 para 8.
- 31 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 6(1).
- 32 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 6(2).
- 33 'Relevant period' means the period of three years starting on the date on which the person ceased to hold office as the Ombudsman or, as the case may be, as an acting Ombudsman: Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(2).
- 34 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(1).
- 35 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(3)(a) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (6)(a)).
- 36 He appointed under the Government of Wales Act 2006 s 48 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**).
- 37 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(3)(b) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (6)(b)).
- 38 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(3)(c).
- 39 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 7(3)(d).
- 40 Public Services Ombudsman (Wales) Act 2005 s 31(1). Before issuing guidance under s 31 the Ombudsman must consult such listed authorities, or persons appearing to him to represent them, as he thinks appropriate; s 31(2). If such guidance is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions: s 31(3). The Ombudsman may publish any guidance issued under this section in any manner that he thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report: s 31(5). Guidance so issued may contain different provision for different purposes: s 31(6). Such guidance must not: (a) mention the name of any person other than the listed authorities to which it is applicable or a listed authority in respect of which a complaint has been made or referred to the Ombudsman; or (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the guidance: s 31(7). However, s 31(7) does not apply if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance: s 31(8).
- 41 As to the Ombudsman's power to investigate see PARA 849.
- 42 See the Public Services Ombudsman (Wales) Act 2005 s 31(4).

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844. Remuneration, and staff of Ombudsman.

The Welsh Assembly¹ must pay a person who is the Ombudsman² or an acting Ombudsman such salary and allowances, and make such payments towards the provision of superannuation benefits for or in respect of him as may be provided for by or under the terms of his appointment³. If a person ceases to be the Ombudsman or an acting Ombudsman and it appears to the Assembly that there are special circumstances which make it right that the person should receive compensation, the Assembly may pay to that person a sum of such amount as it thinks appropriate⁴.

The Ombudsman may appoint such staff as he thinks necessary for assisting him in the discharge of his functions, on such terms and conditions as he may determine⁵. No member of staff of the Ombudsman is to be regarded as holding office under Her Majesty or as discharging any functions on behalf of the Crown⁶, although each member of his staff is to be treated⁷ as being a Crown servant⁸.

1 As to the Welsh Assembly see PARA 97.

2 As to the Ombudsman see PARA 843.

3 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 9(1).

4 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 9(3). The Assembly must pay to or in respect of a person who has ceased to hold office as the Ombudsman or an acting Ombudsman such amounts by way of pensions and gratuities, and such amounts by way of provision for those benefits, as may have been provided for by or under the terms of his appointment: Sch 1 para 9(2).

5 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 11(1).

6 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 11(2).

7 le for the purposes of the Official Secrets Act 1989 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 483 et seq). As to Crown servants see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 388.

8 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 11(3).

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845. Finances and estimates of expenditure.

For each financial year, the Ombudsman must prepare an estimate of the income and expenses of his office¹. The Ombudsman must submit the estimate at least five months before the beginning of the financial year to which it relates to the committee or committees of the National Assembly for Wales specified in the standing orders of the Assembly². The committee or committees must examine any such an estimate and must then lay the estimate before the Assembly with any modifications thought appropriate³. Before laying an estimate with modifications before the Assembly, the committee or committees must consult the Ombudsman, and take into account any representations which the Ombudsman may make⁴.

1 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 15(1).

2 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 15(2) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (12)(a)).

3 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 15(3) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (12)(b)(i)-(iii)).

4 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 15(4) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (12)(c)).

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846. Annual reviews and reports.

The Ombudsman must annually prepare a general report on the discharge of his functions (an 'annual report')¹ and may prepare any other report with respect to his functions that he thinks appropriate (an 'extraordinary report')².

The Ombudsman must lay a copy of each report prepared³ before the Assembly and at the same time send a copy to the Welsh Assembly Government⁴ and, if the report is an extraordinary report, must send a copy of it to any listed authorities⁵, other than the Welsh Assembly Government, he thinks appropriate⁶. The Ombudsman must, and the Assembly may, publish any report laid before the Assembly⁷. The Ombudsman must comply with any directions given by the Assembly with respect to an annual report⁸.

1 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14(1)(a).

2 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14(1)(b).

3 It prepared under the Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14.

4 As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 As to such listed authorities see PARA 854. If a report mentions the name of any person other than a listed authority in respect of which a complaint has been made or referred under the Public Services Ombudsman (Wales) Act 2005 or includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report, that information must not be included in a version of the report laid before the Assembly under Sch 1 para 14(3), sent to a person under Sch 1 para 14(3) or (4) or published by the Ombudsman under Sch 1 para 14(5): Sch 1 para 14(7). This does not apply in relation to a version of the report if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report: Sch 1 para 14(8).

6 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14(3) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 86(1), (11)). The Ombudsman may also send a copy of any report prepared under the Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14 to any other persons he thinks appropriate: Sch 1 para 14(4).

7 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14(5).

8 Public Services Ombudsman (Wales) Act 2005 Sch 1 para 14(6)

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(iii) Investigations

847. Matters subject to investigation.

Generally, local commissioners and the Ombudsman¹ may investigate² any written complaint made by or on behalf of a member of the public³ who claims to have sustained injustice in consequence of maladministration⁴ in connection with action⁵ taken by or on behalf of an authority to which the investigation provisions apply⁶, being:

1023 (1) in relation to England⁷:

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- 29. (a) alleged or apparent maladministration in connection with the exercise of the authority's administrative functions⁸;
- 30. (b) an alleged or apparent failure in a service which it was the authority's function to provide⁹;
- 31. (c) an alleged or apparent failure to provide such a service¹⁰.

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1024 (2) in relation Wales¹¹:

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- 32. (a) alleged maladministration by a listed authority in connection with relevant action¹²;
- 33. (b) an alleged failure in a relevant service provided by a listed authority¹³;
- 34. (c) an alleged failure by a listed authority to provide a relevant service¹⁴.

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Before investigating a complaint, a local commissioner must satisfy himself that the matter has been brought, by or on behalf of the person affected¹⁵, to the notice of the authority to which it relates, and that that authority has been afforded a reasonable opportunity to investigate the matter and respond, or in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of that authority or for that authority to be afforded a reasonable opportunity to investigate the matter and to respond¹⁶.

1 As to local commissioners see PARA 839; and as to the Ombudsman see PARA 843.

2 It was held, in a case concerning similar wording in the Parliamentary Commissioner Act 1967 s 5(1) (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41), that 'may investigate' conferred a discretionary power and that there was no jurisdiction to issue an order of mandamus (now a 'mandatory order') to compel an investigation by the commissioner: see *Re Fletcher's Application* [1970] 2 All ER 527n, CA. See also *R v Parliamentary Comr for Administration, ex p Dyer* [1994] 1 All ER 375 at 383, [1994] 1 WLR 621 at 628, DC, per Simon Brown LJ, where it was held that the Parliamentary Commissioner for Administration was entitled in the exercise of his discretion to limit the scope of his investigation and to be selective as to which of the complainant's complaints he addressed, and to identify certain broad categories of complaint and investigate only those.

3 For these purposes, 'member of the public' means an individual or a body of persons, whether incorporated or not, other than: (1) a local authority or other authority or body constituted for purposes of the public service or of local government (including the Welsh Ministers, the National Assembly for Wales Commission or the National Assembly for Wales), or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; and (2) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department or by the Welsh Ministers, or whose revenues consist wholly or mainly of moneys provided by Parliament or the Welsh Ministers: Local Government Act 1974 s 27(1) (amended by the Government of Wales Act 1998 Sch 12 para 14; the Government of Wales Act 2006 Sch 10 para 10; and the Local Government and Public Involvement in Health Act 2007 s 174(2)). As to who may make a complaint see PARA 855.

4 As to the meaning of 'maladministration' see PARA 850.

5 'Action' includes failure to act, and other expressions connoting action are to be construed accordingly: Local Government Act 1974 s 34(1); Public Services Ombudsman (Wales) Act 2005 s 41(1).

6 le, in relation to England, an authority to which the Local Government Act 1974 Pt III (ss 23-34) applies (see PARA 853) or, in relation to Wales, an authority to which the Public Services Ombudsman (Wales) Act 2005 applies (see PARA 854).

7 See the Local Government Act 1974 s 26(1) (substituted by the Local Government and Public Involvement in Health Act 2007 s 173(1), (2)). The Local Government Act 1974 s 26(1) is subject to s 26(5)-(11) (see PARA 851). However, Pt III does not authorise or require a local commissioner to question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority: s 34(3). This does not prevent an investigation of the circumstances because it will often not be possible to say if a decision was taken with or without maladministration until it has been investigated: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 316, [1979] 2 All ER 881 at 901-902, CA, per Eveleigh LJ. Where the local commissioner or Ombudsman has exceeded this limit on his jurisdiction the fact that Parliament has not created a right of appeal against the findings in his report, and the public law character of his office and powers, found the right of a local authority to relief by way of judicial review: *R v Local Comr for Administration for the South, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire, ex p Eastleigh Borough Council* [1988] QB 855, sub nom *R v Comr for Local Administration, ex p Eastleigh Borough Council* [1988] 3 All ER 151, CA. As to the procedure for investigations see PARA 859. As to the matters that are not subject to investigation see PARA 851. As to misfeasance in public office see **TORT** vol 45(2) (Reissue) PARAS 502, 844-846.

8 See the Local Government Act 1974 s 26(1)(a) (as substituted: see note 7).

9 See the Local Government Act 1974 s 26(1)(b) (as substituted: see note 7).

10 See the Local Government Act 1974 s 26(1)(c) (as substituted: see note 7).

11 See the Public Services Ombudsman (Wales) Act 2005 s 7(1). Section 7(1) is subject to ss 8-11 (see PARAS 852). The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion: s 11(1). However, this does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care: s 11(2).

12 See the Public Services Ombudsman (Wales) Act 2005 s 7(1)(a). 'Relevant action' means: (1) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service (Public Services Ombudsman (Wales) Act 2005 s 7(3)(a)); (2) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions (s 7(3)(b)); (3) in the case of a listed authority which is a person with functions conferred by regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2) (see **HEALTH SERVICES** vol 54 (2008) PARA 596), action taken by the authority in the discharge of any of those functions (Public Services Ombudsman (Wales) Act 2005 s 7(3)(c)); (4) in the case of a listed authority which is a listed authority by virtue of an order under the Public Services Ombudsman (Wales) Act 2005 s 28(2) (see PARA 854) adding it to Sch 3, action taken by the authority in the discharge of any of its specified functions (s 7(3)(d)); and (5) in any other case, action taken by the authority in the discharge of any of its administrative functions (s 7(3)(e)). 'Listed authority's functions' means the functions specified in relation to the authority in an order under s 28(2) as falling within the Ombudsman's remit: s 7(5). An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for these purposes if the person was appointed by the authority, or the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise): s 7(6).

13 See the Public Services Ombudsman (Wales) Act 2005 s 7(1)(b). 'Relevant service' means: (1) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide; (2) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide; (3) in the case of a listed authority falling within s 7(3)(c) (see note 12), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned; (4) in the case of a listed authority falling within s 7(3)(d) (see note 12), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions; and (5) in any other case, any service which it was, at that time, the authority's function to provide: s 7(4).

14 See the Public Services Ombudsman (Wales) Act 2005 s 7(1)(c).

15 'Person affected' means, in relation to a matter which is the subject of a complaint made or to be made under the Local Government Act 1974 Pt III (ss 23-34), the member of the public who claims or is alleged to have sustained injustice in consequence of the matter, and in relation to a matter coming to the attention of a local commissioner to which s 26D applies, means the member of the public who the local commissioner considers has, or may have, sustained injustice in consequence of the matter: s 34(1) (definition added by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 10(b)).

16 Local Government Act 1974 s 26(5) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (2)(a), (b), (c); and SI 2007/1889).

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848. Local commissioner's power to investigate.

A local commissioner¹ may investigate a matter² which relates to action³ taken by or on behalf of an authority⁴, which is subject to investigation⁵ and where a complaint has been made to a member of an authority⁶ or the complaint has been referred, or is treated as having been referred, to a local commissioner⁷, or the matter has come to the attention of a local commissioner⁸. In determining whether to initiate, continue or discontinue an investigation, a local commissioner will act in accordance with his own discretion⁹. Without prejudice to such discretion, a local commissioner may in particular decide to not to investigate a matter, or to discontinue an investigation of a matter, if he is satisfied with action which the authority concerned has taken or proposes to take¹⁰.

1 As to the local commissioners see PARA 839.

2 Ie under the Local Government Act 1974 Pt III (ss 23-34).

3 As to the meaning of 'action' see PARA 847 note 5.

4 Ie an authority to which the Local Government Act 1974 Pt III applies: see PARA 853.

5 Ie an investigation under the Local Government Act 1974 s 26 (see PARA 847).

6 Ie a complaint under the Local Government Act 1974 ss 26A, 26B (see PARAS 855-856).

7 Ie under the Local Government Act 1974 s 26C (see PARA 857).

8 See the Local Government Act 1974 s 24A(1), (2), (3), (5) (s 24A added by the Local Government and Public Involvement in Health Act 2007 s 171). Any question as to whether the complaint has been referred, or has come to the attention of a local commissioner in relation to a matter will be determined by a local commissioner: Local Government Act 1974 s 24A(4).

9 Local Government Act 1974 s 24A(6). This is subject to ss 24A, 26-26D (see PARAS 855-858): s 24A(6).

10 Local Government Act 1974 s 24A(7).

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849. Ombudsman's power to investigate.

The Ombudsman¹ may investigate a complaint in respect of a matter if the complaint has been duly made² or referred³ to him, and the matter is one which he is entitled to investigate⁴. The Ombudsman may investigate a complaint in respect of a matter even if the requirements⁵ are not met in respect of the complaint, if the matter is one which he is entitled to investigate⁶ and he thinks it is reasonable to do so⁷. It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation⁸. The Ombudsman may take any action which he thinks may assist in making such a decision⁹. The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn¹⁰.

1 As to the Ombudsman see PARA 843.

2 For these purposes, a complaint is 'duly made' to the Ombudsman if (but only if) it is made by a person who is entitled under the Public Services Ombudsman (Wales) Act 2005 s 4 to make the complaint to the Ombudsman, and the requirements of the Public Services Ombudsman (Wales) Act 2005 s 5 (see PARA 856) are met in respect of it: s 2(2).

3 For these purposes, a complaint is 'duly referred' to the Ombudsman if (but only if) it is referred to him by a listed authority, and the requirements of the Public Services Ombudsman (Wales) Act 2005 s 6 (see PARA 856) are met in respect of it: s 2(3).

4 Public Services Ombudsman (Wales) Act 2005 s 2(1). The matter must be one which he is entitled to investigate under ss 7-11 (see PARAS 843, 847, 852). The Ombudsman may, in addition to or instead of conducting an investigation, take any action he thinks appropriate with a view to resolving a complaint which he has power to investigate under s 2: s 3(1), (2). Any such action must be taken in private: s 3(3). The Ombudsman may prepare a special report if:

111 (1) a complaint in respect of a listed authority has been resolved under s 3 (s 22(1), (6)(a));

112 (2) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter which is the subject of the complaint (s 22(1), (6)(b));

113 (3) the listed authority has agreed to take particular action before the end of a particular period (s 22(1), (6)(c)); and

114 (4) the Ombudsman is not satisfied that the listed authority has taken that action before the end of the permitted period (s 22(1), (6)(d)). The permitted period for these purposes the period referred to in s 22(6)(c), or any longer period specified by the Ombudsman in writing (s 22(1), (7)).

A special report must set out the facts on the basis of which s 22(6) applies, and make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken to remedy the injustice or hardship to the person aggrieved, and to prevent similar injustice or hardship being caused in the future: s 22(8). The Ombudsman must send a copy of a special report to the person who made the complaint and the listed authority: s 22(9)(b). The Ombudsman may send a copy of a special report to any other persons he thinks appropriate: s 22(10). For further provision with regard to special reports see ss 23, 24; and para 861 note 13.

If a complaint in respect of a matter is made or referred to the Ombudsman, and the complaint is one which the Ombudsman has power to investigate under s 2, then the listed authority in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint: s 34(1), (2). It is immaterial for these purposes that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint: s 34(3). This power to compensate does not affect any other power of the listed authority to make the payment or provide the benefit: s 34(4).

5 Ie the requirements under the Public Services Ombudsman (Wales) Act 2005 s 5(1) or as the case may be s 6(1)(b) or (d) (see PARA 856).

6 Ie entitled to investigate under ss 7-11 (see PARAS 843, 847, 852).

7 Public Services Ombudsman (Wales) Act 2005 s 2(4).

- 8 Public Services Ombudsman (Wales) Act 2005 s 2(5).
- 9 Public Services Ombudsman (Wales) Act 2005 s 2(6).
- 10 Public Services Ombudsman (Wales) Act 2005 s 2(7).

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850. Meaning of 'maladministration'.

'Maladministration' is not defined, but is usually thought to include something that happened in connection with action¹ taken by or on behalf of² one of the authorities subject to investigation³, being action taken in the exercise of administrative functions of that authority which caused injustice⁴ to a member of the public⁵. There is authority for stating that maladministration covers bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness⁶. The presence of maladministration covering the manner in which a decision has been reached or a discretion exercised will justify the local commissioner in inquiring whether a person has suffered injustice⁷.

1 As to the meaning of 'action' see PARA 847 note 5.

2 This includes action by committees, sub-committees and officers exercising delegated powers: see PARA 369 et seq. However, it seems clear that maladministration may consist of powers exercised without due authority and that the words 'on behalf of' also cover any action purported to be taken by individual councillors, or by officers not having delegated powers. Having regard to the rule that a statutory body cannot divest itself of its functions (see PARA 460), it would seem also that actions by consultants and advisers, whether individuals or firms, which in any way form part of the activities of a local authority or other body subject to investigation in performing its administrative functions are within the investigative processes.

3 As to the authorities subject to investigation see PARA 853, 854.

4 As to the meaning of 'injustice' see *Re Freeman* [1927] 1 Ch 479 at 487, CA, per Lord Hanworth MR ('In my judgment 'an injustice' must be construed in a wider sense. It must connote unfairness and import a sense of grievance'). This was a case arising out of property legislation. It is possible for a local commissioner to find that, although there has been maladministration, that maladministration has not caused injustice to the complainant: see eg *R (on the application of Doy) v Comr for Local Administration* [2001] EWHC Admin 361, [2001] All ER (D) 206 (Apr).

5 Although there is a substantial element of overlap between maladministration and unlawful conduct in the context of local government, the concepts are not synonymous: *R v Local Comr for Administration in North and North East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA. As to misfeasance in public office see **TORT** vol 45(2) (Reissue) PARAS 502, 844-846. As to the conduct of members of local authorities see PARA 230 et seq.

6 See *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 311, [1979] 2 All ER 881 at 898, CA, where Lord Denning MR adopted these words from Wade *Administrative Law* (4th Edn, 1977) 82, but made it clear that he regarded this list as open-ended rather than exhaustive. See also *R v Local Comr for Administration in North and North East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA.

7 See *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 311, [1979] 2 All ER 881 at 897-898, CA, per Lord Denning MR. It has been held that, in deciding issues of maladministration, a local commissioner was entitled to apply the test of bias set out in the National Code of Local Government Conduct and ask whether there was 'a reasonable apprehension or suspicion of bias', rather than the less stringent test applied in judicial review proceedings: see *R v Local Comr for Administration in North and North East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA. Similarly a local commissioner has been held to be entitled to have regard to the National Code of Local Government Conduct in determining whether voting in a manner heavily influenced by party political

loyalty amounted to maladministration: see *R v Local Comr for Administration in North and North East England, ex p Liverpool City Council*. As to the National Code of Local Government Conduct see PARA 231.

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851. Matters in England not subject to investigation.

A local commissioner¹ may not conduct an investigation² in respect of:

- 1025 (1) any action³ in respect of which the person affected⁴ has or had a right of appeal, reference or review to or before a tribunal⁵ constituted by or under any enactment⁶;
- 1026 (2) any action in respect of which the person affected has or had a right of appeal to a Minister of the Crown⁷;
- 1027 (3) any action in respect of which the person affected has or had a remedy by way of proceedings in any court of law⁸;
- 1028 (4) any action which in the opinion of the local commissioner affects all or most of the inhabitants of the following areas⁹: (a) where the matter relates to a national park authority, the area of the park for which it is such an authority¹⁰; (b) where the matter relates to the Home and Communities Agency, any designated area¹¹; and (c) in any other case, the area of the authority concerned¹²;
- 1029 (5) the commencement or conduct of civil or criminal proceedings before any court of law¹³;
- 1030 (6) action taken by or on behalf of any police authority in connection with the investigation or prevention of crime¹⁴;
- 1031 (7) action taken in matters relating to contractual or other commercial transactions of any authority to which the investigation provisions¹⁵ apply relating to: (a) the operation of public passenger transport¹⁶; (b) the carrying on of a dock or harbour undertaking¹⁷; (c) the provision of entertainment¹⁸; (d) the provision and operation of industrial establishments¹⁹; and (e) the provision and operation of markets²⁰;
- 1032 (8) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters²¹;
- 1033 (9) any action concerning the giving of instruction, whether secular or religious²², or conduct, curriculum, internal organisation, management or discipline in any school or other educational establishment maintained by the authority²³;
- 1034 (10) action taken by or on behalf of any development corporation established for the purposes of a new town which is not action in connection with functions in relation to housing²⁴;
- 1035 (11) action taken by or on behalf of an urban development corporation²⁵ which is not action in connection with functions in relation to town and country planning²⁶;
- 1036 (12) action taken by or on behalf of the Homes and Communities Agency which is not action in connection with functions in relation to town and country planning²⁷.

Heads (5) to (12) above²⁸ may be amended by Order in Council, which may add to or exclude from the exceptions²⁹.

1 As to the meaning of 'local commissioner' see PARA 839.

2 Ie under the Local Government Act 1974 Pt III (ss 23-34).

3 As to the meaning of 'action' see PARA 847 note 5.

4 As to the meaning of 'person affected' see the PARA 847 note 15.

5 'Tribunal' includes the person constituting a tribunal consisting of one person: Local Government Act 1974 s 34(1).

6 Local Government Act 1974 s 26(6)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (3)). A local commissioner must not conduct an investigation under the Local Government Act 1974 Act Pt III in respect of any action taken by or on behalf of an authority in the exercise of any of the authority's functions otherwise than in relation to England: s 26(6A) (added by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 11(1), (3); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (4)). In order to displace the power to investigate, the right of appeal, reference or review must relate to the action that is the subject of complaint. It is not sufficient that the subject of complaint can be mentioned in the proceedings: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 317, [1979] 2 All ER 881 at 902, CA, per Eveleigh LJ (dealing with the Local Government Act 1974 s 26(6)(c), but it appears that the same reasoning applies to s 26(6)(a), (b)). The commissioner should not trespass on any area in which the courts have jurisdiction except in cases to which the proviso to s 26(6) (see the text and notes 7-8) applies: see *R v Comr for Local Administration, ex p H (A Minor)* (1999) 143 Sol Jo LB 39, (1999) Times, 8 January, applying *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council*.

7 Local Government Act 1974 s 26(6)(b) (amended by the Government of Wales Act 1998 Sch 12 para 13; the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 11(1), (2), Sch 7; and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (3)). See also note 6.

8 Local Government Act 1974 s 26(6)(c) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (3)). See *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033 at 1044, sub nom *R v Comr for Local Administration for the Croydon District, ex p Croydon London Borough Council* (1989) 87 LGR 221 at 236, DC, per Woolf LJ (the Local Government Act 1974 s 26(6) is concerned with a situation where if the complaint was justified the person concerned might be entitled to obtain some form of remedy in respect of the subject matter of the complaint if he had commenced proceedings within the appropriate time limits, not with whether in fact the proceedings would succeed), cited with approval in *R v Local Comr for Administration in North and North East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA. See also *R v Comr for Local Administration, ex p H (A Minor)* (1999) 143 Sol Jo LB 39, (1999) Times, 8 January (the commissioner's power to investigate is displaced where the subject matter of the complaint has been raised in other proceedings even though the relief which could have been obtained in those proceedings did not include any remedy in respect of past maladministration); *R v Comr for Local Administration, ex p PH* (8 March 1999) Lexis, CA (judicial review is a remedy by way of proceedings, and therefore compensation cannot afterwards be sought from the Ombudsman).

Given the comparative jurisdiction of the courts on an application for judicial review and of the role and function of the local commissioner, any complaint of injustice resulting from maladministration dressed up in the language of procedural irregularity for the purposes of judicial review ought initially to be directed to the local commissioner, although a denial of relief (here in the context of a local housing authority's duties under housing or allied legislation) must be limited to the judicial review equivalent of maladministration; it cannot encompass the other grounds of illegality, proportionality and irrationality: *R v Lambeth London Borough Council, ex p Crookes* (1995) 29 HLR 28, citing with approval *R v Comr for Local Administration, ex p Croydon London Borough Council*. See also note 6.

9 Local Government Act 1974 s 26(7) (amended by the Local Government Act 1988 s 29, Sch 3 para 5).

10 Local Government Act 1974 s 26(7)(aa) (added by the Environment Act 1995 s 63(5), Sch 7 para 18(2); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (5)). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

11 Local Government Act 1974 s 26(7)(ba) (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 6(2); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 3(1), (5); and the Housing and Regeneration Act 2008 Sch 8 para 18(1), (3)(b)). 'Designated areas' are designated areas within the meaning of the Leasehold Reform, Housing and Urban Development Act 1993 Pt III (ss 158 -185): see **TOWN AND COUNTRY PLANNING**. As to the Home and Communities Agency see **HOUSING; TOWN AND COUNTRY PLANNING**.

12 Local Government Act 1974 s 26(7)(c) (substituted by the Local Government Act 1988 Sch 3 para 5).

13 Local Government Act 1974 s 26(8), Sch 5 para 1.

- 14 le under the Local Government Act 1974 Pt III.
- 15 Local Government Act 1974 Sch 5 para 2 (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 12; and SI 1988/242, art 2).
- 16 Local Government Act 1974 Sch 5 para 3(1)(a) (s 3 substituted by the Local Government and Public Involvement in Health Act 2007 s 173(1), (4)). This does not include action taken by or on behalf of the London Transport Users Committee in operating a procedure for examining complaints or reviewing decisions: Sch 5 para 31(3) (as so substituted).
- 17 Local Government Act 1974 Sch 5 para 3(1)(b) (as substituted: see note 16). See PARA 853.
- 18 Local Government Act 1974 Sch 5 para 3(1)(c) (as substituted: see note 16). See PARA 853.
- 19 Local Government Act 1974 Sch 5 para 3(1)(d) (as substituted: see note 16). See PARA 853.
- 20 Local Government Act 1974 Sch 5 para 3(1)(e) (as substituted: see note 16). See PARA 853. This does not include transactions relating to the grant, renewal or revocation of a licence to occupy a pitch or stall in a fair or market, or the attachment of any condition to such a licence: s 3(4) (as substituted: see note 16).
- 21 Local Government Act 1974 Sch 5 para 4.
- 22 Local Government Act 1974 Sch 5 para 5(2)(a).
- 23 Local Government Act 1974 Sch 5 para 5(2)(b) (amended by the Education Reform Act 1988 Sch 12 para 71). The purpose of the Local Government Act 1974 Sch 5 para 5(2) is to preclude a local commissioner from looking into matters that go on in local authority schools; there would be difficulties in drawing the line between the investigation of a complaint concerning the manner of an investigation and the underlying subject matter and the possibility of an unfair result if the latter could not be considered: *R (on the application of M) v Comr for Local Administration in England* [2006] EWHC 2847 (Admin), [2007] ELR 42, [2006] All ER (D) 375 (Oct).
- 24 Local Government Act 1974 Sch 5 para 6 (added by the Local Government Act 1988 Sch 3 para 10; and amended by the Government of Wales Act 1998 s 129, Sch 15 para 3; and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 12).
- 25 le any urban development corporation established by an order under the Local Government, Planning and Land Act 1980 s 135 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428 et seq): see the Local Government Act 1974 s 25(1)(bd); and PARA 853.
- 26 Local Government Act 1974 Sch 5 para 7 (added by the Local Government Act 1988 Sch 3 para 10; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 12).
- 27 Local Government Act 1974 Sch 5 para 8 (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 6(3); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 12; and the Housing and Regeneration Act 2008 Sch 8 para 18(1), (4)).
- 28 le the list of matters in the Local Government Act 1974 Sch 5.
- 29 Local Government Act 1974 s 26(9) (amended by the Local Government Act 1988 Sch 3 para 5). As to the orders that have been made see the Local Government (Matters Subject to Investigation) Order 1988, SI 1988/242; and the Local Government (Matters Subject to Investigation) Order 1993, SI 1993/940.

UPDATE

851 Matters in England not subject to investigation

TEXT AND NOTES 22, 23--Head (9). A complaint relating to special educational needs within the meaning given by Education Act 1996 s 312 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 984) may be investigated by a local commissioner: 1974 Act Sch 5 para 5(2) (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 261).

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852. Matters in Wales not subject to investigation.

The Ombudsman¹ may not investigate:

- 1037 (1) a matter arising in connection with the discharge by a listed authority² of any of its functions otherwise than in relation to Wales³;
- 1038 (2) a matter if the person aggrieved⁴ has or had a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative⁵;
- 1039 (3) a matter if the person aggrieved has or had a right of appeal to a Minister of the Crown, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government⁶;
- 1040 (4) a matter if the person aggrieved has or had a remedy by way of proceedings in any court of law⁷;
- 1041 (5) action taken by or with the authority of the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or a police authority for a police area in Wales for the purpose of the investigation or prevention of crime, or the protection of the security of the state⁸;
- 1042 (6) the commencement or conduct of proceedings before a court of competent jurisdiction⁹;
- 1043 (7) action taken by a member of the administrative staff of a relevant tribunal so far as taken at the direction, or on the authority, whether express or implied, of a person acting in his capacity as a member of the tribunal¹⁰;
- 1044 (8) action taken in respect of appointments, removals, pay, discipline, superannuation or other personnel matters, apart from procedures for recruitment and appointment, in relation to: (a) service in an office or employment under the Crown or under a listed authority¹¹; (b) service in an office or employment, or under a contract for services, in respect of which power to take action in personnel matters, or to determine or approve action to be taken in personnel matters, is vested in Her Majesty or a listed authority¹²;
- 1045 (9) action relating to the determination of the amount of rent¹³;
- 1046 (10) action taken by certain authorities¹⁴ and relating to the giving of instruction, or conduct, curriculum, internal organisation, management or discipline, in a school or other educational establishment maintained by a local authority in Wales¹⁵;
- 1047 (11) action which is or has been subject to an inquiry under the Inquiries Act 2005¹⁶ and is taken under the National Health Services Act 1977¹⁷, the National Health Service and Community Care Act 1990 Pt 1¹⁸, the Health Act 1999 Pt 1¹⁹, or the Health and Social Care (Community Health and Standards) Act 2003 Pt 1²⁰;
- 1048 (12) action taken by a Local Health Board in the discharge of its functions²¹.

Heads (5) to (12) may be amended by the Welsh Ministers by order after consulting the Ombudsman²².

1 As to the Ombudsman see PARA 843.

2 As to the meaning of 'listed authority' see PARA 854 note 3.

3 Public Services Ombudsman (Wales) Act 2005 s 8(1). This does not apply in relation to the Welsh Assembly Government: s 8(2) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 69). As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. To the extent that a function of a listed

authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for these purposes as discharged in relation to Wales: Public Services Ombudsman (Wales) Act 2005 s 8(3).

4 'Person aggrieved' means a member of the public who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate under the Public Services Ombudsman (Wales) Act 2005 ss 7-11: s 4(1)(a).

5 Public Services Ombudsman (Wales) Act 2005 s 9(1)(a). Section 9(1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy: s 9(2). The Ombudsman may investigate a matter only if he is satisfied that the matter has been brought to the attention of the listed authority to which it relates by or on behalf of the person aggrieved, and the authority has been given a reasonable opportunity to investigate and respond to it: s 9(3). However, this does not prevent the Ombudsman from investigating a matter if he is satisfied that it is reasonable in the particular circumstances for him to investigate the matter despite the fact that the requirements of s 9(3) have not been met: s 9(4).

6 Public Services Ombudsman (Wales) Act 2005 s 9(1)(b) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 70). See notes 4, 5.

7 Public Services Ombudsman (Wales) Act 2005 s 9(1)(c). See notes 4, 5.

8 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 1 (amended by the Government of Wales Act 2006 Sch 10 paras 67, 87).

9 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 2.

10 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 3.

11 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 4(a).

12 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 4(b).

13 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 5.

14 If a local authority in Wales, an admission appeal panel, the governing body of a community, foundation or voluntary school, and exclusion appeal panel: Public Services Ombudsman (Wales) Act 2005 Sch 2 para 6(2).

15 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 6(1).

16 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 8(a). See **HEALTH SERVICES**.

17 See **ADMINISTRATIVE LAW**.

18 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 8(b). However, this does not include the National Health Service and Community Care Act 1990 ss 33-38 (see **HEALTH SERVICES**): Sch 2 para 8(b).

19 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 8(c).

20 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 8(d).

21 Public Services Ombudsman (Wales) Act 2005 Sch 2 para 9. The text refers to its functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, or any instrument replacing those regulations; regulations made under the National Health Service Act 1977 s 38, s 39, s 41 or s 42 by virtue of the Health and Medicines Act 1988 s 17 (see **HEALTH SERVICES** vol 54 (2008) PARAS 339-340): Public Services Ombudsman (Wales) Act 2005 Sch 2 para 9.

22 See the Public Services Ombudsman (Wales) Act 2005 s 10(2), (3) (amended by the Government of Wales Act 2006, s 160(1), Sch 10, paras 67, 71(1), (2)).

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853. Authorities in England whose actions are subject to investigation.

The provisions for investigation of complaints of maladministration¹ by local commissioners² apply to the following bodies³:

- 1049 (1) any local authority⁴;
- 1050 (2) the Greater London Authority⁵;
- 1051 (3) a national park authority for a national park in England⁶;
- 1052 (4) any joint board the constituent authorities of which are all local authorities⁷;
- 1053 (5) any development corporation established for the purposes of a new town⁸;
- 1054 (6) the London Development Agency⁹;
- 1055 (7) an urban development corporation for an urban development in England¹⁰;
- 1056 (8) housing action trusts¹¹;
- 1057 (9) the Home and Communities Agency¹²;
- 1058 (10) a fire and rescue authority in England¹³;
- 1059 (11) certain joint authorities¹⁴;
- 1060 (12) the London Fire and Emergency Planning Authority¹⁵;
- 1061 (13) certain police authorities¹⁶;
- 1062 (14) the Metropolitan Police Authority¹⁷;
- 1063 (15) Transport for London¹⁸;
- 1064 (16) joint waste authorities¹⁹ established for an area in England²⁰;
- 1065 (17) in relation to the flood defence functions of the Environment Agency²¹, the Environment Agency and any regional flood defence committee for an area wholly or partly in England²²; and
- 1066 (18) the London Transport Users' Committee²³.

Her Majesty may by Order in Council provide that the investigation provisions²⁴ are to apply (subject to any modifications or exceptions as may be specified in the order) to any other authority specified in the order, being an authority which is established by or under an Act of Parliament, and which has power to levy a rate or to issue a precept²⁵.

Any reference to an authority to which the investigation provisions²⁶ apply includes a reference to the members and officers of that authority²⁷, to a committee or sub-committee of that authority, including a joint committee or joint sub-committee on which the authority is represented²⁸.

In the case of a local authority operating executive arrangements, any reference to an authority to which the investigation provisions²⁹ apply also includes the executive³⁰. In the case of the Greater London Authority, any reference to an authority to which the investigation provisions³¹ apply also includes the London Assembly³². Any reference to an authority to which the investigation provisions³³ apply includes a reference to (a) an admission appeals panel³⁴; (b) the governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise performing any of its functions³⁵; and (c) an exclusion appeal panel constituted by the authority³⁶.

Where an authority to which the investigation provisions³⁷ apply exercises a function entirely or partly by means of an arrangement with another person³⁸, action taken by or on behalf of the other person in carrying out the arrangement must be treated as action taken on behalf of the authority³⁹, and in the exercise of the authority's function⁴⁰. This does not apply where, by virtue of another enactment, the action would be treated as action taken by the authority⁴¹.

1 le the Local Government Act 1974 Pt III (ss 23-34): see PARA 839 et seq. As to the meaning of 'maladministration' see PARA 850.

2 As to local commissioners see PARA 839.

- 3 Local Government Act 1974 s 25(1) (amended by the Local Government Act 1988 Sch 3 para 4).
- 4 Local Government Act 1974 s 25(1)(a). As to the meaning of 'local authority' see **PARA 23**.
- 5 Local Government Act 1974 s 25(1)(aaa) (added by the Greater London Authority Act 1999 s 74(1), (2)). As to the Greater London Authority see **LONDON GOVERNMENT**.
- 6 Local Government Act 1974 s 25(1)(ab) (added by the Environment Act 1995 Sch 7 para 18(1); and amended by Public Services Ombudsman (Wales) Act 2005 Sch 6 para 10(a)). As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) **PARA 526** et seq.
- 7 Local Government Act 1974 s 25(1)(b). As to such joint boards see **PARA 380**.
- 8 Local Government Act 1974 s 25(1)(bb) (added by the Local Government Act 1988 Sch 3 para 4). As to development corporations see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA 1322** et seq.
- 9 Local Government Act 1974 s 25(1)(bbb) (added by the Greater London Authority Act 1999 s 394(1), (2)). As to the London Development Agency see **TRADE AND INDUSTRY** vol 97 (2010) **PARA 988**. See also **LONDON GOVERNMENT**.
- 10 Local Government Act 1974 s 25(1)(bd) (added by the Local Government Act 1988 Sch 3 para 4; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 10(b)). The urban development corporations referred to in the text are any urban development corporations established by an order under the Local Government, Planning and Land Act 1980 s 135 for an urban development area in England: see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) **PARA 1428** et seq.
- 11 Local Government Act 1974 s 25(1)(be) (added by the Housing Act 1988 Sch 17, Pt I, para 19; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 10(c)). The housing action trusts referred to in the text are those established under the Housing Act 1988 Pt III (ss 60-92) for a designated area in England: see **HOUSING** vol 22 (2006 Reissue) **PARA 319** et seq.
- 12 Local Government Act 1974 s 25(1)(bf) (added by the Leasehold Reform, Housing and Urban Development Act 1993 Sch 21 para 6(1); and amended by the Housing and Regeneration Act 2008 Sch 8 para 18(1)(2)(b)). As to the Home and Communities Agency see **HOUSING; TOWN AND COUNTRY PLANNING**.
- 13 Local Government Act 1974 s 25(1)(bg) (added by the Local Government Act 2000 Sch 5 para 14; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 10(c)). The fire authorities referred to in the text are those constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies: see **FIRE SERVICES** vol 18(2) (Reissue) **PARA 24**.
- 14 Local Government Act 1974 s 25(1)(c) (substituted by the Local Government Act 1985 Sch 14 para 51(a)). The joint authorities referred to in the text are any joint authorities established by the Local Government Act 1985 Pt IV (ss 23-42): see **PARA 47** et seq.
- 15 Local Government Act 1974 s 25(1)(cza) (added by the Greater London Authority Act 1999 s 394(1), (3)). As to the London Fire and Emergency Planning Authority see **FIRE SERVICES** vol 18(2) (Reissue) **PARA 17; LONDON GOVERNMENT**.
- 16 Local Government Act 1974 s 25(1)(ca) (added by the Local Government Act 1985 Sch 14 para 51(a); substituted by the Police and Magistrates' Court Act 1994 s 43, Sch 4, Pt I, para 16; and amended by the Police Act 1996 s 103(1), Sch 7, Pt I, para 1(1), (2)(j); and the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 10(e)). The police authorities referred to in the text are those established under the Police Act 1996 s 3: see **POLICE** vol 36(1) (2007 Reissue) **PARA 139**.
- 17 Local Government Act 1974 s 25(1)(caa) (added by the Greater London Authority Act 1999 s 394(1), (4)). As to the Metropolitan Police Authority see **POLICE** vol 36(1) (2007 Reissue) **PARAS 147-155**.
- 18 Local Government Act 1974 s 25(1)(cc) (added by the Greater London Authority Act 1999 s 394(1), (5)). As to Transport for London see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) **PARA 246; LONDON GOVERNMENT**.
- 19 As to joint waste authorities see **PARA 51**.
- 20 Local Government Act 1974 s 25(1)(cd) (added by the Local Government and Public Involvement in Health Act 2007 Sch 13 paras 31(1), (2)).
- 21 In within the meaning of the Water Resources Act 1991: see **WATER AND WATERWAYS**. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) **PARA 68** et seq; **WATER AND WATERWAYS** vol 101 (2009) **PARA 734**.

22 Local Government Act 1974 s 25(1)(d) (substituted by the Environment Act 1995 Sch 22 para 18; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 10(f)). As to regional flood defence committees see **WATER AND WATERWAYS** vol 101 (2009) PARA 55 et seq.

23 Local Government Act 1974 s 25(1)(e) (added by the Greater London Authority Act 1999 s 247(7), Sch 18 para 16(1), (2)). As to the London Transport Users' Committee see **LONDON GOVERNMENT**.

24 Ie the Local Government Act 1974 Pt III.

25 Local Government Act 1974 s 25(2). For bodies which may levy a rate or issue a precept see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 524 et seq.

26 Ie the provisions of the Local Government Act 1974 Pt III.

27 Local Government Act 1974 s 25(4)(a).

28 Local Government Act 1974 s 25(4)(b) (substituted by the Local Government and Public Involvement in Health Act 2007 s 172(1), (2)).

29 Ie the provisions of the Local Government Act 1974 Pt III.

30 Local Government Act 1974 s 25(4ZA) (added by the Local Government and Public Involvement in Health Act 2007 s 172(1), (2)).

31 Ie the provisions of the Local Government Act 1974 Pt III.

32 Local Government Act 1974 s 25(4A) (added by the Greater London Authority Act 1999 s 74(1), (3); amended by the Local Government and Public Involvement in Health Act 2007 s 172(1), (4)). As to the London Assembly see **LONDON GOVERNMENT**.

33 Ie the provisions of the Local Government Act 1974 Pt III.

34 Local Government Act 1974 s 25(5)(c) (substituted by the Education Act 2002 Sch 21 para 2(a); and amended by the Education and Inspections Act 2006 Sch 3 para 2(b); and the Local Government and Public Involvement in Health Act 2007 s 172(1), (6)(a)). The admission appeals panels referred to in the text are those constituted in accordance with the Education Act 2002 s 52: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 562.

35 Local Government Act 1974 s 25(5)(d) (substituted by the Education Act 2002 Sch 21 para 2(a); and amended by the Local Government and Public Involvement in Health Act 2007 s 172(1), (6)(b)). The functions referred to in the text are those under the School Standards and Framework Act 1998 Pt III Ch I (ss 84-98): see **EDUCATION**. See further Local Government Act 1974 s 25(5)(e); and the text and note 36.

36 Local Government Act 1974 s 25(5)(e) (added by the Education Act 2002 Sch 21 para 2(b); and amended by the Local Government and Public Involvement in Health Act 2007 s 172(1), (6)(c)). The text refers to an exclusion appeal panel constituted by the authority in accordance with regulations under the Education Act 2002 s 52: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 562.

37 Ie the provisions of the Local Government Act 1974 Pt III.

38 Local Government Act 1974 s 25(6) (s 25(6), (7), (8) added by the Local Government and Public Involvement in Health Act 2007 s 172(1), (7)).

39 Local Government Act 1974 s 25(7)(a) (as added: see note 38).

40 Local Government Act 1974 s 25(7)(b) (as added: see note 38).

41 Local Government Act 1974 s 25(8) (as added: see note 38).

UPDATE

853 Authorities in England whose actions are subject to investigation

TEXT AND NOTES 1-23--The following authorities are also subject to investigation: (1) that established under the Local Democracy, Economic Development and Construction Act 2009 s 88 (economic prosperity boards); and (2) that established under the Local

Democracy, Economic Development and Construction Act 2009 s 103 (combined authorities): Local Government Act 1974 s 25(1)(ce), (cf) (added by Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 41).

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(5) MALADMINISTRATION/(iii) Investigations/854. Authorities in Wales whose actions are subject to investigation.

854. Authorities in Wales whose actions are subject to investigation.

The Ombudsman¹ may investigate complaints of maladministration² against any of the following bodies³:

- 1067 (1) the Welsh Assembly Government⁴;
- 1068 (2) the National Assembly for Wales Commission⁵;
- 1069 (3) a local authority in Wales⁶;
- 1070 (4) a joint board the constituent authorities of which are all local authorities in Wales⁷;
- 1071 (5) a fire and rescue authority in Wales⁸;
- 1072 (6) a police authority for a police area in Wales⁹;
- 1073 (7) the Committee on Climate Change¹⁰;
- 1074 (8) a national park authority for a national park in Wales¹¹;
- 1075 (9) the Countryside Council for Wales¹²;
- 1076 (10) the Environment Agency¹³;
- 1077 (11) the Forestry Commissioners¹⁴;
- 1078 (12) a regional flood defence committee for an area wholly or partly in Wales¹⁵;
- 1079 (13) an internal drainage board for an internal drainage district wholly or partly in Wales¹⁶;
- 1080 (14) the Care Council for Wales¹⁷;
- 1081 (15) the Board of Community Health Councils in Wales¹⁸;
- 1082 (16) a local health board¹⁹;
- 1083 (17) an NHS trust managing a hospital or other establishment or facility in Wales²⁰;
- 1084 (18) a special health authority not discharging functions only or mainly in England²¹;
- 1085 (19) the Wales Centre for Health²²;
- 1086 (20) a community health council²³;
- 1087 (21) an independent provider in Wales²⁴;
- 1088 (22) a family health service provider in Wales²⁵;
- 1089 (23) a person with functions conferred by regulations in relation to health care²⁶;
- 1090 (24) a social landlord in Wales²⁷;
- 1091 (25) the office of Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru²⁸;
- 1092 (26) the Higher Education Funding Council for Wales²⁹;
- 1093 (27) an admission appeal panel³⁰;
- 1094 (28) the governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise discharging any of their functions³¹;
- 1095 (29) an exclusion appeal panel constituted in accordance with regulations³²;
- 1096 (30) the Arts Council of Wales³³;
- 1097 (31) the Sports Council for Wales³⁴;
- 1098 (32) the Welsh Language Board³⁵.

The Welsh Ministers³⁶ may by order amend the list of authorities by adding a person, omitting a person, or changing the description of a person³⁷. Before making such an order, the Welsh Ministers must consult the Ombudsman and any other persons it thinks appropriate³⁸. No order is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly³⁹.

- 1 As to the Ombudsman see PARA 843.
- 2 As to the meaning of 'maladministration' see PARA 850.
- 3 Public Services Ombudsman (Wales) Act 2005 s 28. The bodies in the text are 'listed authorities' for the purposes of the Public Services Ombudsman (Wales) Act 2005: see s 28(1).
- 4 Public Services Ombudsman (Wales) Act 2005 Sch 3 (entry added by the Government of Wales Act 2006 Sch 10 paras 67, 88). As to the Welsh Assembly Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 5 Public Services Ombudsman (Wales) Act 2005 Sch 3 (entry added by the Government of Wales Act 2006 Sch 10 paras 67, 88). As to the National Assembly for Wales Commission see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 6 Public Services Ombudsman (Wales) Act 2005 Sch 3.
- 7 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to joint boards see PARA 380.
- 8 Public Services Ombudsman (Wales) Act 2005 Sch 3. The fire authorities referred to in the text are those constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies: see **FIRE SERVICES** vol 18(2) (Reissue) PARA 24.
- 9 Public Services Ombudsman (Wales) Act 2005 Sch 3.
- 10 Public Services Ombudsman (Wales) Act 2005 Sch 3 (entry added by the Climate Change Act 2008 Sch 1 para 35).
- 11 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 12 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.
- 13 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 14 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Forestry Commissioners see **FORESTRY** vol 52 (2009) PARA 34 et seq.
- 15 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the regional flood defence committee see **WATER AND WATERWAYS** vol 101 (2009) PARA 559 et seq.
- 16 Public Services Ombudsman (Wales) Act 2005 Sch 3.
- 17 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Care Council for Wales see the Care Standards Act 2000 s 54; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1003.
- 18 Public Services Ombudsman (Wales) Act 2005 Sch 3 (entry added by the Public Services Ombudsman for Wales (Jurisdiction and Transitional Provisions and Savings) Order 2006, SI 2006/363).
- 19 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to local health boards see **HEALTH SERVICES** vol 54 (2008) PARA 74.
- 20 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to NHS trusts see **HEALTH SERVICES**.
- 21 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to special health authorities see **HEALTH SERVICES** vol 54 (2008) PARAS 74, 136 et seq.

22 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Wales Centre for Health see **HEALTH SERVICES** vol 54 (2008) PARA 595.

23 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to a community health council see **HEALTH SERVICES** vol 54 (2008) PARA 74.

24 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to an independent provider see **HEALTH SERVICES** vol 54 (2008) PARA 600.

25 Public Services Ombudsman (Wales) Act 2005 Sch 3. The text refers to regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2) (see **HEALTH SERVICES** vol 54 (2008) PARA 596).

26 Public Services Ombudsman (Wales) Act 2005 Sch 3. The text refers to functions conferred under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2) (see **HEALTH SERVICES** vol 54 (2008) PARA 596).

27 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to social landlords see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq.

28 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the office of Her Majesty's Chief Inspector of Education and Training in Wales see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1188.

29 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Higher Education Funding Council for Wales see **EDUCATION** vol 15(2) (2006 Reissue) PARAS 733-759.

30 Public Services Ombudsman (Wales) Act 2005 Sch 3. The text refers to an admission appeal panel constituted in accordance with regulations under the School Standards and Framework Act 1998 s 94(5) or s 95(3) (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 415).

31 Public Services Ombudsman (Wales) Act 2005 Sch 3. The text refers to functions under the School Standards and Framework Act 1998 Pt 3 (ss 84-98) (see **EDUCATION**).

32 Public Services Ombudsman (Wales) Act 2005 Sch 3. The text refers to regulations under the Education Act 2002 s 52 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1261).

33 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Arts Council for Wales see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 962.

34 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Sports Council for Wales see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 965.

35 Public Services Ombudsman (Wales) Act 2005 Sch 3. As to the Welsh Language Board see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 44.

36 As to the Welsh Ministers see PARA 97.

37 Public Services Ombudsman (Wales) Act 2005 s 28(2) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 78(1), (2)). Such an order adding a person to the Public Services Ombudsman (Wales) Act 2005 Sch 3 may provide for the Act to apply to the person with the modifications specified in the order: s 28(3). Such an order may not omit the Welsh Assembly Government or the National Assembly for Wales Commission: s 29(1) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (2)). Such an order may add a person only if (1) the person has functions dischargeable in relation to Wales or a part of Wales (whether or not the functions are also dischargeable otherwise than in relation to Wales) (s 29(2)(a)); (2) all or some of the person's functions are in a field in which the Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has, functions (s 29(2)(b) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (3))); and (3) if (a) it is a body established by or under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or another listed authority (Public Services Ombudsman (Wales) Act 2005 s 29(3)(a) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (4)(a))); (b) it is a body wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government or another listed authority (Public Services Ombudsman (Wales) Act 2005 s 29(3)(b) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (4)(a))); (c) at least half of its expenditure on the discharge of its functions in relation to Wales is met out of the Welsh Consolidated Fund or is met directly from payments made by other listed authorities (Public Services Ombudsman (Wales) Act 2005 s 29(3)(c) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (4)(b))); (d) it is a body established by or under an enactment and it has power to issue a

precept or a levy (Public Services Ombudsman (Wales) Act 2005 s 29(4)); and (e) it appears to the Welsh Ministers that the person discharges functions of a public nature, and at least half of the person's expenditure on the discharge of those functions in relation to Wales is met out of the Welsh Consolidated Fund or directly or indirectly from payments made by other listed authorities (s 29(5) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 79(1), (5))). An order under the Public Services Ombudsman (Wales) Act 2005 s 28(2) may not add a Special Health Authority discharging functions only or mainly in England or a person who carries on under national ownership an industry or undertaking or part of an industry or undertaking, to the list of authorities: Public Services Ombudsman (Wales) Act 2005 s 29(6). Such an order must also specify whether all or only some of the person's functions are to fall within the remit of the Ombudsman under Pt 2 (ss 2-34) (see PARA 843 et seq) and, if only some of the person's functions are to fall within the remit of the Ombudsman under Pt 2, which those functions are: s 30(1). If the person is to be added on the basis that the person falls within s 29(3) or (4) the order may specify a function under s 30(1) only if the function is in a field in which the Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has, functions: s 30(2) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 80, (1), (2)(a)). If the person is to be added the order may specify a function under the Public Services Ombudsman (Wales) Act 2005 s 30(1) only if the function is in a field in which the Welsh Ministers have, or the First Minister for Wales or the Counsel General to the Welsh Assembly Government has, functions, and the function appears to the Welsh Ministers to be a function of a public nature: s 30(3) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 80(1), (4)).

38 Public Services Ombudsman (Wales) Act 2005 s 28(4) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 78(1), (2)).

39 Public Services Ombudsman (Wales) Act 2005 s 28(4A) (added by the Government of Wales Act 2006 Sch 10 paras 67, 78(1), (3)).

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855. Who may make complaints.

Complaints of maladministration may only be made by a member of the public¹ who claims to have sustained injustice in consequence of the matter²; or by a person authorised in writing by such a member of the public to act on his behalf³. Where the member of the public by whom a complaint might have been made has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a person who appears to a local commissioner or Ombudsman to be suitable to represent him⁴.

1 In relation to Wales, 'member of the public' means any person other than a listed authority acting in its capacity as such: Public Services Ombudsman (Wales) Act 2005 s 4(2). The member of the public is referred to as the 'person aggrieved': see PARA 852 note 4. It is for the Ombudsman to determine any question of whether a person is entitled under s 4 to make a complaint to him: s 4(3).

2 See the Local Government Act 1974 s 26A(1)(a) (s 26A added by Local Government and Public Involvement in Health Act 2007 s 174(1)); and the Public Services Ombudsman (Wales) Act 2005 s 4(1)(a).

3 See the Local Government Act 1974 s 26A(1)(b) (as added: see note 2); and the Public Services Ombudsman (Wales) Act 2005 s 4(1)(b).

4 See the Local Government Act 1974 s 26A(2) (as added: see note 2); and the Public Services Ombudsman (Wales) Act 2005 s 4(1)(c).

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856. Procedure for making complaints.

In England, a complaint about a matter under the investigatory provisions¹ must be made in writing, and before the end of the permitted period². A local commissioner may disapply either or both of these requirements in relation to a particular complaint³.

In Wales, the complaint must be in writing⁴ and the complaint must be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint⁵. In the case of complaints referred to the Ombudsman, the complaint must be referred to the Ombudsman in writing⁶ and the complaint must have been made to the listed authority⁷ by a person who would have been entitled⁸ to make the complaint to the Ombudsman⁹, and must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint¹⁰. The complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the authority¹¹. It is for the Ombudsman to determine any question of whether these requirements are met in respect of a complaint¹².

1 le under the Local Government Act 1974 Pt III (ss 23-34).

2 Local Government Act 1974 s 26B(1) (s 26B added by the Local Government and Public Involvement in Health Act 2007 s 174(1)). 'Permitted period' means the period of 12 months beginning with: (1) the day on which the person affected first had notice of the matter; or (2) if the person affected has died without having notice of the matter: (a) the day on which the personal representatives of the person affected first had notice of the matter; or (b) if earlier, the day on which the complainant first had notice of the matter: Local Government Act 1974 s 26B(2) (as so added).

3 Local Government Act 1974 s 26B(3) (as added: see note 2).

4 Public Services Ombudsman (Wales) Act 2005 s 5(1)(a). A listed authority must take reasonable step to publicise the complaints procedure: see s 33.

5 Public Services Ombudsman (Wales) Act 2005 s 5(1)(b).

6 Public Services Ombudsman (Wales) Act 2005 s 6(1)(c).

7 As to listed authorities see PARA 854.

8 le entitled under the Public Services Ombudsman (Wales) Act 2005 s 4 (see PARA 855).

9 Public Services Ombudsman (Wales) Act 2005 s 6(1)(a).

10 Public Services Ombudsman (Wales) Act 2005 s 6(1)(b).

11 Public Services Ombudsman (Wales) Act 2005 s 6(1)(d).

12 Public Services Ombudsman (Wales) Act 2005 ss 5(2), 6(2).

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857. Referral of complaints to the local commissioner.

Where a complaint¹ about a matter is made to a member of an authority², if the complainant consents, the complaint may be referred to a local commissioner by the member of the authority to whom the complaint was made, any other member of that authority, or a member

of any other authority which is alleged in the complaint to have taken or authorised the action complained of³. Such a referral must be made in writing⁴. If a local commissioner is satisfied that the complainant asked a member of an authority to refer the complaint to a local commissioner, he may treat the complaint as if it had been referred to him⁵.

1 As to the making of a complaint see PARA 856.

2 In an authority to which the Local Government Act 1974 Pt III (ss 23-34) applies: see PARA 853. A member of an authority includes: (1) in relation to a national park authority, a member of any of the councils by whom a local authority member of the authority is appointed; (2) in relation to a joint board, a member of any of the constituent authorities of the joint board; (3) in relation to a joint authority established by the Local Government Act 1985 Pt 4 (ss 23-42), a member of a constituent council of that authority; (4) in relation to an authority established by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (see PARA 51), a person who may be a member of the authority in accordance with s 208: Local Government Act 1974 s 26C(3) (s 26C added by the Local Government and Public Involvement in Health Act 2007 s 174(1); s 26C(3) amended by the Local Government and Public Involvement in Health Act 2007 Sch 13 para 31(1), (3)).

3 Local Government Act 1974 s 26C(1), (2) (as added: see note 2).

4 Local Government Act 1974 s 26C(3) (as added: see note 2). However, a local commissioner may disapply the requirement in relation to a particular referral: s 26C(4) (as added: see note 2).

5 Local Government Act 1974 s 26C(5) (as added: see note 2).

UPDATE

857 Referral of complaints to the local commissioner

TEXT AND NOTES--Local Government Act 1974 s 26C further amended: Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 41.

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858. Matters coming to the attention of the local commissioner.

A matter comes to the attention of a local commissioner where the matter came to his attention during the course of an investigation¹, before the person affected or his personal representatives had notice of the matter, or in any other case, before the end of the permitted period², and it appears to the local commissioner that a member of the public has, or may have, suffered injustice in consequence of the matter³.

1 Local Government Act 1974 s 26D(1)(a) (added by the Local Government and Public Involvement in Health Act 2007 s 174(1)). The text refers to an investigation under the Local Government Act 1974 Pt III (ss 23-34).

2 Local Government Act 1974 s 26D(1)(b) (as added: see note 1). A local commissioner may disapply this requirement in relation to a particular matter: s 26D(3) (as added: see note 1). 'Permitted period' means the period of 12 months beginning with the day on which the person affected first had notice of the matter, or if the person affected has died without having notice of the matter, the day on which the personal representatives of the person affected first had notice of the matter: s 26D(2) (as added: see note 1).

3 Local Government Act 1974 s 26D(1)(c) (as added: see note 1).

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859. Procedure for investigations.

Where a local commissioner¹ or Ombudsman² proposes to investigate a matter under the investigatory provisions³, or to conduct an investigation pursuant to a complaint in respect of a listed authority⁴, he must afford to the authority concerned, and to any person who is alleged in the complaint, if any, or who otherwise appears to the local commissioner to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the matter⁵. The investigation must be conducted in private⁶. Subject to these two overriding requirements, the procedure is to be such as the local commissioner or Ombudsman considers appropriate in the circumstances of the case⁷.

The local commissioner or Ombudsman may obtain information from such persons and in such manner and make such inquiries as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise⁸, in the investigation⁹. He may if he thinks fit pay to the person who made the complaint, if any, and to any other person who attends or furnishes information for the purposes of an investigation sums in respect of the expenses properly incurred by them and allowances by way of compensation for the loss of their time¹⁰.

For the purposes of an investigation, the local commissioner or Ombudsman may require any member or officer of the authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such documents¹¹, or in the case of the Ombudsman, to provide any facility he may reasonably require¹².

The local commissioner may require any person to furnish information concerning communications between the authority concerned and any government department or to produce any correspondence or other documents forming part of any such written communications¹³. In relation to England, nothing in these provisions¹⁴ affects the restrictions imposed on the disclosure of information by the Parliamentary Commissioner for Administration or his officers¹⁵, or the Health Service Commissioner for England¹⁶ or the Public Services Ombudsman for Wales¹⁷.

To assist him in any investigation, the local commissioner or Ombudsman may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may determine¹⁸.

If any person without lawful excuse obstructs a local commissioner or Ombudsman in the performance of his functions, or any officer of the commission assisting in the performance of those functions, or is guilty of any act or omission in relation to an investigation which, if that investigation was a proceeding in the High Court, would constitute contempt of court, he may certify the offence to the High Court¹⁹.

The conduct of an investigation does not affect any action taken by the authority concerned, or any power or duty of that authority to take further action with respect to any matters subject to the investigation²⁰.

1 As to local commissioners see PARA 839.

2 As to the Ombudsman see PARA 843.

3 Ie under the Local Government Act 1974 Pt III (ss 23-34).

4 As to making a complaint see PARA 855 et seq.

5 See the Local Government Act 1974 s 28(1); and the Public Services Ombudsman (Wales) Act 2005 s 13(1).

6 See the Local Government Act 1974 s 28(2); and the Public Services Ombudsman (Wales) Act 2005 s 13(2). There is no exception to this rule.

7 See the Local Government Act 1974 s 28(2); and the Public Services Ombudsman (Wales) Act 2005 s 13(3).

8 As from a date to be appointed, in relation to Wales, the text is amended to refer to an authorised person: Public Services Ombudsman (Wales) Act 2005 s 13(4) (prospectively amended by the Legal Services Act 2007 Sch 21 para 151(a)). 'Authorised person' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation: Public Services Ombudsman (Wales) Act 2005 s 13(4A) (prospectively added by the Legal Services Act 2007 Sch 21 para 151(b)).

9 Local Government Act 1974 s 28(2); Public Services Ombudsman (Wales) Act 2005 s 13(4) (see note 8).

10 Local Government Act 1974 s 28(3); Public Services Ombudsman (Wales) Act 2005 s 13(5).

11 Local Government Act 1974 s 29(1); Public Services Ombudsman (Wales) Act 2005 s 14(1). For the purposes of an investigation, the local commissioner or the Ombudsman have the same powers as the High Court in respect of the attendance and examination of witnesses and in respect of the production of documents: Local Government Act 1974 s 29(2); Public Services Ombudsman (Wales) Act 2005 s 14(2). As to these powers see **CIVIL PROCEDURE**. Subject to the Local Government Act 1974 s 29(4) and the Public Services Ombudsman (Wales) Act 2005 s 14(6) (as appropriate), no person may be compelled to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court: Local Government Act 1974 s 29(7); Public Services Ombudsman (Wales) Act 2005 s 14(4). As to evidence generally see **CIVIL PROCEDURE**.

12 Public Services Ombudsman (Wales) Act 2005 s 14(3). No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, applies to the disclosure of information in accordance an investigation, and in such cases the Crown is not entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings: s 14(5), (6).

13 Local Government Act 1974 s 29(3) (amended by the Government of Wales Act 1998 Sch 12 para 15; and the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 12(1), (2), Sch 7). Where information is disclosed in accordance with the Local Government Act 1974 s 29(3), being information which is derived from a communication from a government department or the National Assembly for Wales and which has not been made public, a local commissioner must not without the written consent of an officer of the government department or a member of the Assembly's staff make a report which includes all or any of that information unless he has given the department or the Assembly not less than one month's notice in writing of his intention: Local Government Act 1974 s 32(5) (amended by the Government of Wales Act 1998 Sch 12 para 16; and the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 13, Sch 7). As to reports see PARA 860. No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, applies to the disclosure of information in accordance with the Local Government Act 1974 s 29(3) and in such cases the Crown is not entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings: s 29(4).

14 Ie the Local Government Act 1974 s 29(1), (3) (see the text and notes 11-12).

15 Ie the restrictions imposed by the Parliamentary Commissioner Act 1967 s 11(2) (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41). As to the Parliamentary Commissioner see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41.

16 Ie the restriction imposed by the Health Service Commissioners Act 1993 s 15 (see **HEALTH SERVICES** vol 54 (2008) PARA 641). As to the Health Service Commissioner for England see **HEALTH SERVICES** vol 54 (2008) PARA 641.

17 Local Government Act 1974 s 29(5) (amended by the Government of Wales Act 1998 Sch 12 para 15(3)).

18 Local Government Act 1974 s 29(6); Public Services Ombudsman (Wales) Act 2005 Sch 1 para 12.

19 See the Local Government Act 1974 s 29; and the Public Services Ombudsman (Wales) Act 2005 s 15.

20 See the Local Government Act 1974 s 28(4); and the Public Services Ombudsman (Wales) Act 2005 s 13(6).

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860. Reports on investigations by the local commissioner.

Where a local commissioner¹ completes an investigation of a matter, he must prepare a report of the results of the investigation and send a copy to each of the persons concerned².

A local commissioner may include in a report on a matter any recommendations that he could include in a further report on the matter³.

Apart from identifying the authority or authorities concerned the report must not mention the name of any person⁴ or contain any particulars which, in the opinion of the local commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report⁵, unless, after taking into account the public interest as well as the interests of the complainant, if any, and of other persons, the local commissioner considers it necessary to mention the name of that person or to include in the report any such particulars⁶.

The authority concerned must, for a period of three weeks, make copies of the report available for inspection by the public without charge at all reasonable hours at one or more of its offices⁷. The authority concerned must supply a copy of the report to any person on request if he pays such charge as the authority may reasonably require⁸. Not later than two weeks after the report is received by the authority concerned the authority's proper officer must give public notice that copies of the report will be available for such inspection or supply⁹. The local commissioner may, if he thinks fit after taking into account the public interest and the interests of the complainant, if any, and of other persons, direct that a report specified in the direction is not to be subject to these provisions¹⁰. It is an offence for a person having custody of a report made available for inspection to obstruct any person seeking to inspect the report or to make a copy of or extract from it¹¹.

Where a local commissioner reports that there has been maladministration in connection with the exercise of the authority's administrative functions¹², a failure in a service which it was the function of an authority to provide¹³, or a failure to provide such a service¹⁴, the report must be laid before the authority concerned¹⁵ which must consider it and, within three months of receipt of the report or such longer period as the local commissioner may agree in writing, notify the local commissioner of the action which it has taken or proposes to take¹⁶. If the local commissioner does not receive the required notification within the period allowed¹⁷, or is not satisfied with the action which the authority concerned has taken or proposes to take¹⁸, or does not within a period of three months, beginning with the end of the period so allowed, or such longer period as the local commissioner may agree in writing, receive confirmation from the authority concerned that it has taken action, as proposed, to his satisfaction¹⁹, he must make a further report setting out those facts and making such recommendations²⁰. Where the report relates to maladministration, those recommendations are recommendations with respect to action which, in the local commissioner's opinion, the authority concerned should take to remedy any injustice sustained by the person affected in consequence of the maladministration²¹, and to prevent injustice being caused in the future in consequence of similar maladministration in connection with the exercise of the authority's administrative functions²². Where the report relates to a failure in, or to provide, a service which it was the function of the authority to provide, those recommendations are recommendations with respect to action which, in the local commissioner's opinion, the authority concerned should take to remedy any injustice sustained by the person affected in consequence of the failure²³,

and to prevent injustice being caused in the future in consequence of a similar failure in, or to provide, a service which it is the function of the authority to provide²⁴.

The authority concerned is under the same duties to consider such a further report and to notify the local commissioner of the action it has taken or proposes to take as in the case of the original report²⁵. If the local commissioner: (1) does not receive the required notification within the period allowed, or is satisfied before that period has expired that the authority concerned has decided to take no action²⁶; or (2) is not satisfied with the action which the authority concerned has taken or proposes to take²⁷; or (3) does not, within a period of three months beginning with the end of the period allowed, or such longer period as he may agree in writing, receive confirmation from the authority concerned that it has taken action, as proposed, to his satisfaction²⁸, he may, by notice to the authority, require it to arrange for a statement to be published²⁹. The statement, in such form as the authority concerned and the local commissioner may agree³⁰, must consist of: (a) details of any action recommended by the local commissioner in his further report which the authority has not taken³¹; (b) such supporting material as the local commissioner may require³²; and (c) if the authority so requires, a statement of the reasons for its having taken no action on, or not the action recommended in, the report³³. If the authority concerned fails to arrange for the publication of the statement or is unable, within the period of one month from receipt of the notice requiring publication, or such longer period as the local commissioner may agree in writing, to agree with the local commissioner the form of the statement to be published, the local commissioner must arrange for the statement to be published³⁴.

Where a further report of a local commissioner is considered by a person other than the appropriate listed authority³⁵ and it is proposed that no action should be taken on the report, or the action recommended in the report should not be taken consideration of the report must be referred to that authority³⁶.

This restriction does not apply where the report recommends action to be taken by a joint committee³⁷, a local fisheries committee³⁸, or an admission panel or exclusion panel³⁹, and the report is considered by that committee or panel⁴⁰.

If an authority considering a further report of the local commissioner takes into consideration a report by a person or body with an interest in the local commissioner's report, it must not conclude its consideration of the local commissioner's report without also having taken into consideration a report by a person or body with no interest in the local commissioner's report⁴¹.

No individual will decide or vote on any question with respect to a report or further report in which he is named and criticised by a local commissioner⁴².

A local commissioner may publish all or part of a report⁴³ or statement⁴⁴, arrange for further publication of all or part of a statement⁴⁵, or publish a summary of a matter which is the subject of a report or statement⁴⁶, if, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, he considers it appropriate to do so⁴⁷.

The rules as to privilege for the purposes of the law of defamation apply to reports by local commissioners⁴⁸ and information obtained from a government department or the National Assembly for Wales which has not been made public may not be included in a report without the permission of that department unless the local commissioner has given the department concerned not less than one month's notice of his intention⁴⁹.

1 As to the local commissioners see PARA 839.

2 Local Government Act 1974 s 30(1) (substituted by the Local Government and Public Involvement in Health Act 2007 s 175(1), (2)). 'Persons concerned' means: (1) the complainant, if any; (2) any person who referred the matter under the Local Government Act 1974 s 26C(2) (see PARA 857); (3) the authority concerned; and (4) any other authority or person who is alleged in the complaint, or who otherwise appears to the local commissioner, to have taken or authorised the action which is or would be the subject of the investigation:

Local Government Act 1974 s 30(1D) (s 30(1A)-(1D) added by the Local Government and Public Involvement in Health Act 2007 s 175(1), (2)).

If, after the investigation of a matter is completed, the local commissioner decides that he is satisfied with action which the authority concerned has taken or proposes to take, and that it is not appropriate to prepare and send a copy of a report under the Local Government Act 1974 s 30(1), he may instead prepare a statement of his reasons for the decision and send a copy to each of the persons concerned: s 30(1B) (as so added).

If a local commissioner decides not to investigate a matter, or to discontinue an investigation of a matter, he must prepare a statement of his reasons for the decision and send a copy to each of the persons concerned: s 30(1C) (as so added). Where the commissioner commences but then discontinues an investigation, there is only a requirement to explain his decision, there is no obligation to produce or send a report under s 30(1): *R (on the application of Maxhuni) v Comr of Local Administration for England* [2002] EWCA Civ 973, [2003] LGR 113.

Where a complaint about the matter was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement must be sent to the chairman, or as the case may be, mayor of that authority: s 30(2) (amended by the Local Government and Public Involvement in Health Act 2007 s 175(1), (3)).

If the authority concerned is the Greater London Authority the duty to send a report or statement under the Local Government Act 1974 s 30(1), (1B) or (1C) is discharged by sending the report or statement to both the Mayor of London and the London Assembly: s 30(2AA)(b) (added by the Greater London Authority Act 1999 s 74(1), (4); and amended by the Local Government and Public Involvement in Health Act 2007 s 175(1), (4)). As to the Greater London Authority, the Mayor of London and the London Assembly see **LONDON GOVERNMENT**.

Where the authority concerned is the Greater London Authority, any functions exercisable under the Local Government Act 1974 s 30 by or in relation to the Authority (other than functions exercisable by or in relation to the proper officer of the Authority) are exercisable by or in relation to the Mayor of London and the London Assembly acting jointly on behalf of the Authority; and references to the authority concerned (other than references to the proper officer or a member of the authority concerned) are to be construed accordingly: s 30(8) (added by the Greater London Authority Act 1999 s 74(1), (6)). As to the proper officer see **PARA 431**.

It has been held in relation to the Parliamentary Commissioner for Administration that once his report has been submitted to the relevant member of Parliament and the department he is functus officio and is unable to re-open his investigation without a further referral: see *R v Parliamentary Comr for Administration, ex p Dyer* [1994] 1 All ER 375 at 384, [1994] 1 WLR 621 at 629, DC, per Simon Brown LJ. It is submitted that the same reasoning must apply to the local commissioner.

3 Local Government Act 1974 s 30(1A) (as added: see note 2).

4 Local Government Act 1974 s 30(3)(a) (s 30(3) amended by the Local Government and Housing Act 1989 s 32(1); the Local Government Act 2000 Sch 5 para 15(a), Sch 6; and the Local Government and Public Involvement in Health Act 2007 s 175(1), (6)).

5 Local Government Act 1974 s 30(3)(b) (as amended: see note 4).

6 Local Government Act 1974 s 30(3) (as amended: see note 4). Nothing in this provision prevents a report from mentioning the name of, or containing particulars likely to identify, the Mayor of London or any member of the London Assembly: s 30(3AA) (added by the Greater London Authority Act 1999 s 74(1), (5)). Where the local commissioner is of the opinion that action constituting maladministration was taken which involved a member of the authority concerned and that the member's conduct constituted a breach of the National Code of Local Government Conduct, then, unless the local commissioner is satisfied that it would be unjust to do so, he must name the member and give particulars of the breach in his report: Local Government Act 1974 s 30(3A) (added by the Local Government and Housing Act 1989 s 32(1)). As from a day to be appointed, the Local Government Act 1974 s 30(3A) (as so added) is repealed by the Local Government Act 2000 Sch 5 para 15(b), Sch 6 (not yet in force). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'maladministration' see **PARA 850**. As to the National Code of Local Government Conduct see **PARA 231**.

7 Local Government Act 1974 s 30(4). Any person may take copies of or extracts from the report when so made available: s 30(4).

8 Local Government Act 1974 s 30(4A) (added by the Local Government Act 1988 Sch 3 para 6).

9 See the Local Government Act 1974 s 30(5) (amended by the Local Government Act 1988 Sch 3 para 6). The reference in the text to inspection or supply is a reference to inspection or supply under the Local Government Act 1974 s 30(4) or s 30(4A) (see notes 7-8). The notice must be given by advertisement in newspapers and such other ways as appear to the proper officer to be appropriate, and must specify the date, being a date not more than one week after public notice is first given, from which the period of three weeks will begin: s 30(5).

10 Local Government Act 1974 s 30(7) (amended by the Local Government Act 1988 Sch 3 para 6; and the Local Government and Public Involvement in Health Act 2007 s 175(1), (7)). The provisions referred to in the text are those of the Local Government Act 1974 s 30(4), (4A), (5) (see the text and notes 7-10).

11 See the Local Government Act 1974 s 30(6). Such an offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see s 30(6) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 105 note 7.

12 Local Government Act 1974 s 31(1)(a) (s 31(1) substituted by the Local Government and Public Involvement in Health Act 2007 s 176(1), (2)).

13 Local Government Act 1974 s 31(1)(b) (as substituted: see note 12).

14 Local Government Act 1974 s 31(1)(c) (as substituted: see note 12).

15 Where the authority concerned is the Greater London Authority, any functions exercisable under the Local Government Act 1974 s 31 by or in relation to the Authority are exercisable by or in relation to the Mayor of London and the London Assembly acting jointly on behalf of the Authority; and references to the authority concerned (other than references to a member of the authority concerned) are to be construed accordingly: s 31(4) (added by the Greater London Authority Act 1999 s 74(1), (7)).

16 See the Local Government Act 1974 s 31(2) (substituted by the Local Government and Housing Act 1989 s 26). As to action taken following a report of maladministration see PARA 862.

17 Local Government Act 1974 s 31(2A)(a) (s 31(2A) added by the Local Government Act 1988 Sch 3 para 7; and substituted by the Local Government and Housing Act 1989 s 26).

18 Local Government Act 1974 s 31(2A)(b) (as added and substituted: see note 17).

19 Local Government Act 1974 s 31(2A)(c) (as added and substituted: see note 17).

20 Local Government Act 1974 s 31(2A) (as added and substituted: see note 17), s 31(2B) (added by the Local Government and Housing Act 1989 s 26). The requirements of the Local Government Act 1974 s 30 also apply to this further report: see s 31(2C) (added by the Local Government and Housing Act 1989 s 26).

21 Local Government Act 1974 s 31(2B)(a) (s 31(2B), (2BA) substituted by the Local Government and Public Involvement in Health Act 2007 s 176).

22 Local Government Act 1974 s 31(2B)(b) (as substituted: see note 21).

23 Local Government Act 1974 s 31(2BA)(a) (as substituted: see note 21).

24 Local Government Act 1974 s 31(2BA)(b) (as substituted: see note 21).

25 See the Local Government Act 1974 s 31(2) (as substituted: see note 16), s 31(2C) (added by the Local Government Act 1988 Sch 3 para 7; and substituted by the Local Government and Housing Act 1989 s 26).

26 Local Government Act 1974 s 31(2D)(a) (s 31(2D) added by the Local Government and Housing Act 1989 s 26).

27 Local Government Act 1974 s 31(2D)(b) (as added: see note 26).

28 Local Government Act 1974 s 31(2D)(c) (as added: see note 26).

29 Local Government Act 1974 s 31(2D) (as added: see note 26).

30 Local Government Act 1974 s 31(2E) (s 31(2E) added by the Local Government and Housing Act 1989 s 26).

31 Local Government Act 1974 s 31(2E)(a) (as added: see note 30).

32 Local Government Act 1974 s 31(2E)(b) (as added: see note 30).

33 Local Government Act 1974 s 31(2E)(c) (as added: see note 30). Publication must be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the local commissioner or, in default of agreement, nominated by him, and must be on the earliest practicable date: s 31(2F) (added by the Local Government and Housing Act 1989 s 26).

34 Local Government Act 1974 s 31(2G) (added by the Local Government and Housing Act 1989 s 26). The local commissioner must arrange for the statement to be published in any two editions within a fortnight of a newspaper circulating within the authority's area: see the Local Government Act 1974 s 31(2G). The authority concerned must reimburse the commission on demand any reasonable expenses incurred by the local commissioner in performing this duty: s 31(2H) (added by the Local Government and Housing Act 1989 s 26).

35 For the these purposes 'listed authority' means an authority mentioned in the Local Government Act 1974 s 25(1) (see PARA 853) or specified in an order under subsection 25(2) (but does not include a person mentioned in section 25(4)-(5)) (see PARA 853): s 31A(1B)(a) (s 31A added by the Local Government and Housing Act 1989 s 28; and s 31A(1B) added by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (2)). A listed authority is the appropriate listed authority in relation to a further report if the report relates to the authority (or to any person with which the authority is connected by virtue of the Local Government Act 1974 s 25(4)-(5)) (see PARA 853): s 31A(1B)(b) (as so added).

36 Local Government Act 1974 s 31(1A) (as added (see note 35); s 31A(1A) added by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (2)). Any functions exercisable under the Local Government Act 1974 s 31A by or in relation to the Greater London Authority are exercisable by or in relation to the Mayor of London and the London Assembly acting jointly on behalf of the Greater London Authority; and references to an authority concerned are to be construed accordingly: s 31A(7) (s 31A as added (see note 35); and s 31A(7) added by the Greater London Authority Act 1999 s 74(1), (9); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (6)).

37 See the Local Government Act 1974 s 31A(3)(a) (as added (see note 35); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (3)(a)). The committees referred to in the text are those established under the Local Government Act 1972 s 101: see PARA 370 et seq.

38 See the Local Government Act 1974 s 31A(3)(b) (as added: see note 35; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (3)(c)). The local fisheries committees referred to in the text are those constituted under the Sea Fisheries Regulation Act 1966 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964).

39 See the Local Government Act 1974 s 31A(3)(c) (as added: see note 35; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (3)(c)). The admission panel and exclusion panel mentioned in the text are those referred to in the Local Government Act 1974 s 25(5)(c) (see PARA 853).

40 See the Local Government Act 1974 s 31A(3) (see notes 37-39).

41 Local Government Act 1974 s 31A(4) (as added: see note 35).

42 Local Government Act 1974 s 31A(5) (as added (see note 35) and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 6(1), (4)).

43 Ie a report under the Local Government Act 1974 s 30 or 31: see s 31B(1)(a), (b) (s 31B added by the Local Government and Public Involvement in Health Act 2007 s 177).

44 Ie a statement under the Local Government Act 1974 s 30: see s 31B(1)(a) (as added: see note 43).

45 Ie a statement published under the Local Government Act 1974 s 31(2D) or (2G): see s 31B(1)(c) (as added: see note 43).

46 Ie a summary of a matter which is the subject of a report or statement under the Local Government Act 1974 s 30 or s 31: s 31B(1)(d) (as added: see note 43).

47 See the Local Government Act 1974 s 31B(1) (as added: see note 43). A local commissioner may: (1) supply a copy of all or part of a report, statement or summary mentioned in s 31B(1) to any person who requests it; and (2) charge a reasonable fee for doing so: s 31B(2) (as added: see note 43). Section 30(3) applies to any part of a statement under s 30, and any part of a summary of a matter, that is published, or a copy of which is supplied, under s 31B as it applies to a report prepared under s 30: s 31B(3) (as added: see note 43).

48 See the Local Government Act 1974 s 32(1); and PARA 863.

49 See the Local Government Act 1974 s 32(5); and PARA 859.

UPDATE

860 Reports on investigations by the local commissioner

TEXT AND NOTES 37-40--Local Government Act 1974 s 31A(3) further amended to include an inshore fisheries and conservation authority for a district established under the Marine and Coastal Access Act 2009 s 149: Marine and Coastal Access Act 2009 Sch 14 para 9 (not yet in force).

Local Government Act 1974 s 31A(3)(b) repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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861. Reports on investigations by the Ombudsman.

The Ombudsman¹ must, after conducting an investigation² into a complaint in respect of a listed authority³ prepare a report on his findings⁴, and send a copy of the report to all the appropriate persons⁵.

The Ombudsman may send a copy of the report to any other persons he thinks appropriate⁶. The Ombudsman may publish a prepared report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so⁷.

If an investigation is conducted in respect of a listed authority and the authority receives a copy of a report, the authority must make copies of that version of the report available for a period of at least three weeks at one or more of the authority's offices, and if the authority has a website, on the website⁸.

Where a report mentions the name of any person other than the listed authority in respect of which the complaint was made⁹, or includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report¹⁰, that information must not be included in a version of the report¹¹ sent to a person¹².

If, in a report of an investigation in respect of a listed authority, the Ombudsman concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated¹³, the listed authority must consider the report and notify the Ombudsman before the end of the permitted period¹⁴ of the action it has taken or proposes to take in response to it, and the period before the end of which it proposes to have taken that action, if it has not already done so¹⁵. If the Ombudsman is satisfied that the listed authority has wilfully disregarded his report without lawful excuse, he may issue a certificate to that effect to the High Court¹⁶.

Where after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority he concludes:

- 1099 (1) that the person aggrieved has not sustained injustice or hardship in consequence of the matter investigated, and he is satisfied that the public interest does not require a report¹⁷; or
- 1100 (2) that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated, the listed authority agrees to implement, before the end of the permitted period¹⁸, any recommendations he makes, and he is satisfied that the public interest does not require a report¹⁹,

he may decide to prepare an alternative report on his findings²⁰. The Ombudsman may publish such a report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so²¹.

1 As to the meaning of 'Ombudsman' see PARA 843.

2 As to such an investigation see PARA 859 et seq.

3 As to listed authorities see PARA 854.

4 Public Services Ombudsman (Wales) Act 2005 s 16(1)(a).

5 Public Services Ombudsman (Wales) Act 2005 s 16(1)(b). 'Appropriate persons' means (1) the person who made the complaint; (2) the listed authority; (3) any other person who is alleged in the complaint to have taken or authorised the action complained of; (4) if the listed authority is a family health service provider in Wales: (a) any Local Health Board with whom the authority had, at the time of the action which is the subject of the complaint, entered into a contract to provide the family health services which are under investigation; (b) any person to whom the authority had, at that time, undertaken to provide those services; (c) any person with whom the authority had, at that time, made arrangements for the provision of those services; (5) if the listed authority is an independent provider in Wales: (a) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the complaint, made arrangements for the provision of the services under investigation; (b) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services; and (6) the First Minister for Wales, unless the listed authority is itself the Welsh Assembly Government or is a local authority in Wales: s 16(2) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 73(1), (2)). As to the Welsh Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Public Services Ombudsman (Wales) Act 2005 s 16(3).

7 Public Services Ombudsman (Wales) Act 2005 s 16(4). The Ombudsman may supply a copy of a report so published, or any part of such a report, to any person who requests it: s 16(5). The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report: s 16(6).

8 Public Services Ombudsman (Wales) Act 2005 s 17(1). Further provision is made with regard to publicising reports in s 17(2)-(10).

9 Public Services Ombudsman (Wales) Act 2005 s 16(7)(a).

10 Public Services Ombudsman (Wales) Act 2005 s 16(7)(b).

11 If a report sent under the Public Services Ombudsman (Wales) Act 2005 s 16(1)(b), (3), or published under s 16(4).

12 Public Services Ombudsman (Wales) Act 2005 s 16(7). This does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report: s 16(8).

13 Public Services Ombudsman (Wales) Act 2005 s 19(1). The Ombudsman may prepare a special report if, in a report under s 16, he has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated and:

115 (1) he has not received the notification required under s 19 before the end of the period permitted under that section (s 22(1), (2)(a));

116 (2) he has received that notification but he is not satisfied with the action which the listed authority has taken or proposes to take, or the period before the end of which it proposes to have taken that action (s 22(1), (2)(b)); or

117 (3) he has received that notification but he is not satisfied that the listed authority has, before the end of the permitted period, taken the action it proposed to take (s 22(1), (2)(c)). The permitted period for the purposes of s 22(2)(c) is the period referred to in section 19(2)(b) (see the text to note 15), or any longer period specified by the Ombudsman in writing: s 22(3).

A special report must set out the facts on the basis of which s 22(2) applies, and make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken to remedy the injustice or hardship to the person aggrieved, and to prevent similar injustice or hardship being caused in the future: s 22(8). The Ombudsman must send a copy of a special report if it is prepared because s 22(2) applies, to each person to whom a copy of the report under s 16 was sent under section 16(1)(b) (see the text to note 5): s 22(9)(a). The Ombudsman may send a copy of a special report to any other persons he thinks appropriate: s 22(10). Supplementary provision is made with regard to the publishing of a special report: see s 23 (amended by the Government of Wales Act 2006 ss 160(1), 163, Sch 10, paras 67, 75, Sch 12). If a special report is made in a case where the complaint was made in respect of the Welsh Assembly Government or the National Assembly for Wales Commission, the relevant person must lay a copy of the report before the Assembly: Public Services Ombudsman (Wales) Act 2005 s 24(1), (2) (amended by the Government of Wales Act 2006 ss 160(1), 163, Sch 10, paras 67, 76, Sch 12). For these purposes 'the relevant person', means: (a) if the complaint was made in respect of the Welsh Assembly Government, the First Minister for Wales; and (b) if the complaint was made in respect of the National Assembly for Wales Commission, a member of that Commission: Public Services Ombudsman (Wales) Act 2005 s 24(2A) (added by the Government of Wales Act 2006 ss 160(1), Sch 10, paras 67, 76).

14 For these purposes, the 'permitted period' means the period of one month beginning on the date on which the authority receives the report, or any longer period specified by the Ombudsman in writing: Public Services Ombudsman (Wales) Act 2005 s 19(3).

15 Public Services Ombudsman (Wales) Act 2005 s 19(2).

16 See the Public Services Ombudsman (Wales) Act 2005 s 20.

17 Public Services Ombudsman (Wales) Act 2005 s 21(1). The text refers to a report made under ss 16-19 (see the text and notes 1-15).

18 For these purposes, 'permitted period' means a period agreed between the Ombudsman, the listed authority and the person who made the complaint, or if the Ombudsman thinks that no such agreement can be reached, the period specified by him in writing: Public Services Ombudsman (Wales) Act 2005 s 21(3).

19 Public Services Ombudsman (Wales) Act 2005 s 21(2). The text refers to a report made under ss 16-19 (see the text and notes 1-15).

The Ombudsman may prepare a special report if he has prepared a report by virtue of s 21(2), and is not satisfied that the listed authority has implemented his recommendations before the end of the permitted period: s 22(1), (4). The permitted period for these purposes of is the period referred to in s 21(2)(b) (see note 18), or any longer period specified by the Ombudsman in writing: s 21(5). A special report must set out the facts on the basis of which s 22(4) applies, and make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken to remedy the injustice or hardship to the person aggrieved, and to prevent similar injustice or hardship being caused in the future: s 22(8). The Ombudsman must send a copy of a special report to the person who made the complaint and the listed authority: s 22(9)(b). The Ombudsman may send a copy of a special report to any other persons he thinks appropriate: s 22(10). Supplementary provision is made with regard to the publishing of a special report: see s 23 (amended by the Government of Wales Act 2006 ss 160(1), 163, Sch 10, paras 67, 75, Sch 12). For special reports relating to the Welsh Assembly Government or the Notional Assembly for Wales Commission see note 13.

20 Public Services Ombudsman (Wales) Act 2005 s 21(4). The text refers to an alternative report meaning a report made under s 21. Where the Ombudsman decides to prepare such a report: (1) ss 16-19 do not apply; (2) he must send a copy of the report to the person who made the complaint, and the listed authority; and (3) he may send a copy of the report to any other persons he thinks appropriate: s 21(5).

21 Public Services Ombudsman (Wales) Act 2005 s 21(6). The Ombudsman may supply a copy of a report published under s 21(6), or any part of such a report, to any person who requests it: s 21(7). The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report: s 21(8).

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862. Action following maladministration.

In any case where a report by a local commissioner¹ is laid before an authority² and, on consideration of the report, it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of maladministration³ to which the report relates, the authority may incur such expenditure as appears to it to be appropriate in making such a payment or providing such a benefit⁴.

Payment⁵ may be made without the requirement for a report to be laid⁶. Where a relevant authority⁷ considers: (1) that action⁸ taken by or on behalf of the authority in the exercise of its functions amounts to, or may amount to, maladministration⁹; and (2) that a person has been, or may have been, adversely affected by that action¹⁰, then the authority may, if it thinks appropriate, make a payment to, or provide some other benefit for, that person¹¹.

1 As to the meaning of 'local commissioner' see PARA 839.

2 le under the Local Government Act 1974 s 31(2) or s 31(2C) (see PARA 860). As to the authorities subject to investigation see PARA 853.

3 As to the meaning of 'maladministration' see PARA 850.

4 Local Government Act 1974 s 31(3) (added by the Local Government Act 1978 s 1; and amended by the Local Government Act 1988 Sch 3 para 7; and the Local Government and Housing Act 1989 Sch 11 para 39).

5 le under the Local Government Act 2000.

6 See the Local Government Act 2000 s 92.

7 As to the meaning of 'relevant authority' see PARA 232 note 4; definition applied by the Local Government Act 2000 s 92(3).

8 For these purposes, 'action' includes failure to act: Local Government Act 2000 s 92(3).

9 Local Government Act 2000 s 92(1)(a).

10 Local Government Act 2000 s 92(1)(b).

11 Local Government Act 2000 s 92(1). Any function which is conferred on the Greater London Authority under this provision is to be exercisable by the Mayor of London and the London Assembly acting jointly on behalf of the Authority: s 92(2). As to the Greater London Authority, the Mayor of London and the London Assembly see **LONDON GOVERNMENT**.

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863. Law of defamation and disclosure of information.

For the purposes of the law of defamation, the following publications are absolutely privileged¹:

- 1101 (1) the publication of any matter in communications between a member or officer of an authority and a local commissioner², or any person discharging or assisting in the discharge of a function of a local commissioner, for the purposes of the investigation provisions³;
- 1102 (2) the publication of any matter by a local commissioner or by any person discharging or assisting in the discharge of a function of a local commissioner in communicating with a complainant, or with the person affected in relation to the matter, for the purposes of the investigation provisions⁴;

- 1103 (3) the publication of any matter by a local commissioner or by any person discharging or assisting in the discharge of a function of a local commissioner in communicating with the Parliamentary Commissioner⁵ or the Health Service Commissioner for England⁶ or any officer of either such commissioner for the purposes of the investigation provisions⁷;
- 1104 (4) the publication of any matter in preparing, making and sending a report or statement⁸ or in making a report available to the public or in supplying a copy⁹;
- 1105 (5) the publication of any matter contained in a report by a local commissioner which has been made available to the public, being publication by inclusion in a report of either commission¹⁰;
- 1106 (6) the publication of any matter by inclusion in a statement relating to a further report by a local commissioner¹¹;
- 1107 (7) the publication of any matter by inclusion in a report, statement or summary published or supplied by a local commissioner¹²;
- 1108 (8) the publication of a matter by the Ombudsman¹³, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions, in the discharge of any of the Ombudsman's functions¹⁴;
- 1109 (9) the publication of a matter by a person in the discharge of functions¹⁵;
- 1110 (10) the publication of a matter in connection with a complaint made or referred to the Ombudsman¹⁶, in communications between:

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35. (a) a listed authority¹⁷, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions¹⁸; and
36. (b) the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions¹⁹;

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- 1111 (11) the publication of any matter in connection with a complaint made or referred, or to be made or referred, by or on behalf of a person to the Ombudsman²⁰ in communications between a person and an Assembly member²¹;
- 1112 (12) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Part, in communications between the person and the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions²².

A Minister of the Crown or certain authorities²³ may give notice²⁴ in writing to a local commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest²⁵.

Information obtained by a local commissioner or any person discharging or assisting in the discharge of a function of a local commissioner in the course of or for the purposes of an investigation²⁶ must not be disclosed except for the purposes of the investigation and of any report or summary²⁷, for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England, or both²⁸, or for the purposes of certain proceedings²⁹.

Except in those proceedings, a local commissioner and the officers of his commission may not be called upon to give evidence in any proceedings of matters coming to his or their knowledge in the course of an investigation³⁰.

A local commissioner may, however, disclose certain information to the Information Commissioner³¹.

In relation to Wales, information³² must not be disclosed except:

- 1113 (i) for the purposes of deciding whether to begin an investigation³³;
- 1114 (ii) for the purposes of an investigation³⁴;
- 1115 (iii) for the purposes of resolving a complaint³⁵;
- 1116 (iv) for the purposes of a statement or report made in relation to a complaint or investigation³⁶;
- 1117 (v) for the purposes of consultation and co-operation³⁷;
- 1118 (vi) for the purposes of proceedings for offences³⁸;
- 1119 (vii) for the purposes of an inquiry with a view to the taking of proceedings under head (vi)³⁹;
- 1120 (viii) for the purposes of proceedings for obstruction and contempt⁴⁰;
- 1121 (ix) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest⁴¹; and
- 1122 (x) in the case of information which applies to the Information Commissioner⁴².

A Minister of the Crown may give notice to the Ombudsman with respect to any document or information specified in the notice, or any class of document or information so specified, that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest⁴³.

1 As to absolute privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 94 et seq.

2 As to the local commissioner see PARA 839.

3 Local Government Act 1974 s 32(1)(a) (amended by the Local Government Act 1988 Sch 3 para 8; and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 7(1), (2)). The provisions referred to in the text are those of the Local Government Act 1974 Pt III (ss 23-34).

The protection of absolute privilege in defamation applies only to the communications between a member or officer of the authority concerned and a local commissioner or any officer of either commission. Thus the complainant himself does not enjoy absolute privilege in respect of the publication of his complaint but remains subject to the ordinary law of defamation, which includes, in the absence of malice, his being entitled to rely on the defence of qualified privilege. As to the defence of qualified privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 109 et seq.

4 Local Government Act 1974 s 32(1)(b) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 7(1), (3)).

5 As to the Parliamentary Commissioner see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41.

6 As to the Health Commission for England see **HEALTH SERVICES** vol 54 (2008) PARA 641 et seq.

7 Local Government Act 1974 s 32(1)(ba) (added by SI 2007/1889; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 7(1), (4)). The provisions referred to in the text are those of the Local Government Act 1974 Pt III.

8 Ie in accordance with the Local Government Act 1974 s 30 or s 31: see PARA 860.

9 Local Government Act 1974 s 32(1)(c) (amended by the Local Government Act 1988 Sch 3 para 8). The reference in the text to supplying a copy is a reference to supplying a copy under the Local Government Act 1974 s 30(4A) (as added: see PARA 860).

10 Local Government Act 1974 s 32(1)(d) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 7(1), (5)). This provision refers to publication by inclusion in a report made or published under s 23A (see PARA 842). As to reports on investigations see PARA 860.

11 Local Government Act 1974 s 32(1)(e) (added by the Local Government and Housing Act 1989 Sch 11 para 40). The statement referred to in the text is a statement published in accordance with the Local Government Act 1974 s 31(2D), s 31(2E), s 31(2F) or s 31(2G): see PARA 860.

12 Local Government Act 1974 s 32(1)(f) (added by the Local Government and Public Involvement in Health Act 2007 Sch 12 para 7(a)). The report, statement or summary referred to in the text is a report, statement or summary published or supplied under the Local Government Act 1974 s 31B: see PARA 860.

13 As to the Ombudsman see PARA 843.

14 Public Services Ombudsman (Wales) Act 2005 s 32(a). The functions referred to in the text are those under the Public Services Ombudsman (Wales) Act 2005.

15 Public Services Ombudsman (Wales) Act 2005 s 32(b). The functions referred to in the text are those under s 17 (see PARA 861).

16 *le* referred to under the Public Services Ombudsman (Wales) Act 2005 Pt 2 (ss 2-34) (see PARA 843 et seq).

17 As to the meaning of 'listed authority' see PARA 854 note 3.

18 Public Services Ombudsman (Wales) Act 2005 s 32(c)(i).

19 Public Services Ombudsman (Wales) Act 2005 s 32(c)(ii).

20 *le* under the Public Services Ombudsman (Wales) Act 2005 Pt 2.

21 Public Services Ombudsman (Wales) Act 2005 s 32(d).

22 Public Services Ombudsman (Wales) Act 2005 s 32(e).

23 *le* any of the authorities to which the Local Government Act 1974 Pt 3 (ss 23-34) applies. The provisions of s 32 apply to the Commissioners for Her Majesty's Revenue and Customs as they apply to a Minister of the Crown: s 32(6) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1)).

24 Where such a notice is given nothing in the Local Government Act 1974 Pt 3 (ss 23-34) must be construed as authorising or requiring the local commissioner or any person discharging or assisting in the discharge of a function of a local commissioner to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified provided that a notice given under s 32(3) may be discharged by the Secretary of State or the Welsh Ministers: s 32(3) (amended by the Local Government, Planning and Land Act 1980 s 184(1) and the Local Government and Public Involvement in Health Act 2007 Sch 12 para 7(8)(b)). A notice under the Local Government Act 1974 s 32(3) may not be given electronically: s 32(3A) (s 32(3A) added by the Local Government and Public Involvement in Health Act 2007 s 178(1)). As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

25 Local Government Act 1974 s 32(3) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 para 7(8)(a)). The provisions of the Local Government Act 1974 s 25(4), (4A), (5) do not apply for the purposes of s 32(3): s 32(3B) (added by the Local Government and Public Involvement in Health Act 2007 Sch 12 para 7(9)). Nothing in the Local Government Act 1974 s 32(3) affects the obligations imposed by s 29(3), (4) (see PARA 859): s 32(4).

26 *le* an investigation under the Local Government Act 1974 Pt III. Information obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 is to be treated for the purposes of the Local Government Act 1974 s 32(2) as obtained for the purposes of an investigation under Pt III and, in relation to such information, s 32(2)(a) (see the text and note 23) is to be read so that the information must not be disclosed except for the purposes of any investigation: see s 32(7) (added by the Freedom of Information Act 2000 Sch 7 para 3). As to the Information Commissioner see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 518.

27 Local Government Act 1974 s 32(2)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 7(1), (7)). See also *R (on the application of Turpin) v Comr for Local Administration* [2001] EWHC Admin 503, [2003] LGR 133, [2001] All ER (D) 327 (Jun). The report or summary referred to in the text is a report or summary to be made under the Local Government Act 1974 s 30 or s 31 or s 31B: see PARA 860. As to withholding information for being contrary to the public interest see s 32(3), (4); and PARA 859 note 12.

28 Local Government Act 1974 s 32(2)(aa) (added by SI 2007/1889).

29 Local Government Act 1974 s 32(2)(b), (c) (s 32(2)(b) amended by the Official Secrets Act 1989 Sch 1 para 1(e)). Information must not be disclosed except for the purposes of: (1) proceedings for an offence under the Official Secrets Acts 1911 to 1989 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 478 et seq) alleged to have been committed in respect of information obtained by virtue of the Local Government Act 1974 Pt III by a local commissioner or by a person discharging or assisting in the discharge of a function of local commissioner; (2) proceedings for an offence of perjury alleged to have been committed in the course of an investigation under Pt III; (3) any inquiry with a view to the taking of those proceedings; and (4) proceedings under s 29(9) (see PARA 859 note 18): see s 32(2)(b), (c). As to perjury see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 712 et seq.

30 Local Government Act 1974 s 32(2).

31 A local commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the local commissioner under or for the purposes of the Local Government Act 1974 Pt III if the information appears to the local commissioner to relate to: (1) a matter in respect of which the Information Commissioner could exercise any power conferred by the Data Protection Act 1998 Pt V (ss 40-50) (enforcement: see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 559), the Freedom of Information Act 2000 s 48 (practice recommendations) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 608) or Pt IV (ss 50-56) (enforcement) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARAS 608-614); or (2) the commission of an offence under any provision of the Data Protection Act 1998 other than Sch 9 para 12 (obstruction of execution of warrant: see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 575) or under the Freedom of Information Act 2000 s 77 (offence of altering records with intent to prevent disclosure) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 587): Local Government Act 1974 s 33A(1) (s 33A added by the Freedom of Information Act 2000 Sch 7 para 4). Nothing in the Local Government Act 1974 s 32(2) applies in relation to the disclosure of information in accordance with this provision: s 33A(2) (as so added).

32 For these purposes, 'information' means:

- 118 (1) information obtained by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions in deciding whether to begin an investigation, in the course of an investigation, or in resolving a complaint under the Public Services Ombudsman (Wales) Act 2005 s 3 (see PARA 849) (s 26(1)(a));
- 119 (2) information obtained from an Ombudsman mentioned in s 25(7) by virtue of any provision of s 25 or a corresponding provision in an enactment relating to any of those ombudsmen (s 26(1)(b));
- 120 (3) information obtained from the Commissioner for Older People in Wales by virtue of any provision of s 25A or 25B (see PARA 865) or the Commissioner for Older People (Wales) Act 2006 s 16 or s 17 (Public Services Ombudsman (Wales) Act 2005 s 26(1)(ba) (added by the Commissioner for Older People (Wales) Act 2006 Sch 4 para 2(1), (3)(a)));
- 121 (4) information obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 s 76 (disclosure between Information Commissioner and ombudsmen) (Public Services Ombudsman (Wales) Act 2005 s 26(1)(c)).

No person may be called on to give evidence in any proceedings, other than proceedings under s 26(2) (see text and notes 33-42), of information obtained by him under heads (1), (2): s 26(6).

33 Public Services Ombudsman (Wales) Act 2005 s 26(2)(a).

34 Public Services Ombudsman (Wales) Act 2005 s 26(2)(b).

35 Public Services Ombudsman (Wales) Act 2005 s 26(2)(c). This refers to a complaint under the Public Services Ombudsman (Wales) Act 2005 s 3 (see PARA 849).

36 Public Services Ombudsman (Wales) Act 2005 s 26(2)(d).

37 Public Services Ombudsman (Wales) Act 2005 s 26(2)(e). See the Public Services Ombudsman (Wales) Act 2005 s 25, 25A or 25B (see PARA 865).

38 Public Services Ombudsman (Wales) Act 2005 s 26(2)(f). Ie an offence under the Official Secrets Acts 1911 to 1989 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 478 et seq) alleged to have been committed by the Ombudsman, a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions, or an offence of perjury alleged to have been committed

in the course of an investigation. As to perjury see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 712 et seq.

39 Public Services Ombudsman (Wales) Act 2005 s 26(2)(g).

40 Public Services Ombudsman (Wales) Act 2005 s 26(2)(h). Such proceedings are under s 15 (see PARA 859).

41 Public Services Ombudsman (Wales) Act 2005 s 26(2)(i).

42 Public Services Ombudsman (Wales) Act 2005 s 26(2)(j). Such cases are where it appears to the Ombudsman that information relates to a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment, or the commission of an offence: s 26(3). For these purposes, 'enactment' means the Data Protection Act 1998 Pt 5 (ss 27-39), the Freedom of Information Act 2000 s 48, Pt 4 (ss 50-56): s 26(4). For these purposes, 'offences' means an offence under any provisions of the Data Protection Act 1998 other than Sch 9 para 12 (obstruction of execution of warrant), and the Freedom of Information Act 2000 s 77 (offence of altering etc records with intent to prevent disclosure): s 26(5).

43 Public Services Ombudsman (Wales) Act 2005 s 27(1). If a notice is given under s 27(1), nothing in the Public Services Ombudsman (Wales) Act 2005 is to be construed as authorising or requiring the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice: s 27(2).

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864. Consultations between commissioners.

If at any stage in the course of conducting an investigation¹ a local commissioner² forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration³, by the Health Service Commissioner for England⁴, or by the Public Services Ombudsman for Wales⁵, he must consult with the appropriate Commissioner or Ombudsman about the matter and, where a complaint was made about the matter, he will, if he considers it necessary, inform the person initiating the complaint of the steps necessary to initiate a complaint⁶ to the appropriate Commissioner or Ombudsman as the case may be⁷. Those other Commissioners and the Ombudsman must similarly consult the appropriate local commissioner where, in investigating a complaint under their jurisdiction, they conclude that it relates partly to a matter which could be investigated under the local government complaints procedure⁸.

Similarly, an ethical standards officer⁹ must consult with the appropriate local commissioner, and local commissioners must consult with the Standards Board for England¹⁰.

1 le under the Local Government Act 1974 Pt III (ss 23-34).

2 As to the meaning of 'local commissioner' see PARA 839.

3 Local Government Act 1974 s 33(1)(a) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 8(1), (2)(a)). The investigation referred to in the text is an investigation in accordance with the Parliamentary Commissioner Act 1967 s 5: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41. As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

4 Local Government Act 1974 s 33(1)(b) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4; and the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 15(1), (2)(b), Sch 7). The investigation referred to in the text is an investigation in accordance with the Health Service Commissioners Act 1993: see **HEALTH SERVICES** vol 54 (2008) PARA 641 et seq. As to the Health Service Commissioners see **HEALTH SERVICES** vol 54 (2008) PARA 641 et seq.

5 Local Government Act 1974 s 33(1)(ba) (added by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 15(1), (2)(c)). The investigation referred to in the text is an investigation in accordance with the Public Services Ombudsman (Wales) Act 2005 (see PARA 849).

6 le under the Parliamentary Commissioner Act 1967 s 5, the Health Service Commissioners Act 1993, or the Public Services Ombudsman (Wales) Act 2005.

7 See the Local Government Act 1974 s 33(1) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4, Sch 3; and the Government of Wales Act 1998 Sch 12 para 17; the Housing Act 2004 Sch 15 para 7(1); the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 7, 15(1), (2)(d), Sch 7; the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 8(1), (2)(b), (e); and SI 2004/1823).

Where such a consultation takes place, the commissioners involved may consult about any matter relating to the complaint, including: (1) the conduct of any investigation into the matter; and (2) the form, content and publication of any report of the results of such an investigation: see the Local Government Act 1974 s 33(2) (amended by the Government of Wales Act 1998 Sch 12 para 17; Housing Act 2004 Sch 15 paras 7(1), 13(1), (3)(a); Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 15(1)(3)(b); and the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 8(1), (3)).

The prohibition on disclosure of information does not apply to the disclosure of information in the course of such consultations: see the Local Government Act 1974 s 33(5) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4; and the Government of Wales Act 1998 Sch 12 para 17, Sch 18, Pt I; the Housing Act 2004 Sch 15 para 7(1), (5); the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 7, 15(1), (4)(a), Sch 7; and SI 2004/1823). As to the prohibition on disclosure of information see the Local Government Act 1974 s 32(2) (see PARA 863), the Parliamentary Commissioner Act 1967 s 11(2) (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41), the Health Service Commissioners Act 1993 s 15 (see **HEALTH SERVICES** vol 54 (2008) PARA 641) and the Government of Wales Act 1998 Sch 9 para 25(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**).

8 See the Local Government Act 1974 s 33(3) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4, Sch 3); the Health Service Commissioners Act 1993 s 18; and the Government of Wales Act 1998 Sch 9 para 27. See further **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 46 et seq; **CONSTITUTIONAL LAW AND HUMAN RIGHTS; HEALTH SERVICES** vol 54 (2008) PARA 654. The person initiating the complaint must, if necessary, be informed of the complaints procedure under the Local Government Act 1974 Pt III: see s 33(3); the Health Service Commissioners Act 1993 s 18; and the Government of Wales Act 1998 Sch 9 para 27. Where such a consultation takes place the Local Government Act 1974 s 33(2) (see note 7) applies with the necessary modifications: s 33(4) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4, Sch 3).

9 As to an ethical standards officer see PARA 243.

10 See the Local Government Act 2000 s 67; and PARA 266. As to the Standards Board for England see PARA 243 et seq.

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865. Consultations between ombudsmen.

If, in making a decision¹ or conducting an investigation, the Public Services Ombudsman² forms the opinion that any matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman³:

- 1123 (1) the Ombudsman must consult that ombudsman about the matter⁴; and
- 1124 (2) the Ombudsman may co-operate with that ombudsman in relation to the matter⁵.

Consultation under head (1), and co-operation under head (2), may extend to anything relating to any matter the subject of the complaint or investigation, including in particular the conduct of an investigation into the complaint and the form⁶, content and publication of a report of the investigation⁷.

- 1 le a decision under the Public Services Ombudsman (Wales) Act 2005 s 2(5) (see PARA 849).
- 2 As to the Public Services Ombudsman for Wales see PARA 843.
- 3 Public Services Ombudsman (Wales) Act 2005 s 25(1). 'Ombudsman' means, for these purposes, (1) the Parliamentary Commissioner for Administration; (2) the Health Service Commissioner for England; (3) a local commissioner; (4) a housing ombudsman appointed in accordance with a scheme approved under the Housing Act 1996 s 51; and (5) the Children's Commissioner for Wales: s 25(7). The Welsh Ministers may by order amend this list by adding a person, omitting a person, or changing the description of a person: s 25(8) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 77(1), (2)). Such an order may add a person only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints: Public Services Ombudsman (Wales) Act 2005 s 25(9) (amended by the Government of Wales Act 2006 Sch 10 paras 67, 77(1), (2)). No order under the Public Services Ombudsman (Wales) Act 2005 s 25(8) is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly: s 25(10) (added by the Government of Wales Act 2006 Sch 10 paras 67, 77(1), (3)). Special provision is made for the Public Services Ombudsman to work jointly or collaboratively with the Commissioner for Older People in Wales: see the Public Services Ombudsman (Wales) Act 2005 ss 25A, 25B (added by the Commissioner for Older People (Wales) Act 2006 s 22, Sch 4, para 2(1), (2)).
- 4 Public Services Ombudsman (Wales) Act 2005 s 25(2). If the Ombudsman consults an ombudsman about such a matter the Ombudsman and that ombudsman may: (1) conduct a joint investigation into the matter; (2) prepare a joint report in relation to the investigation; (3) publish the joint report: s 25(5).
- 5 Public Services Ombudsman (Wales) Act 2005 s 25(3).
- 6 Public Services Ombudsman (Wales) Act 2005 s 25(4)(a).
- 7 Public Services Ombudsman (Wales) Act 2005 s 25(4)(b).

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866. Collaborative working between the local commissioners and other commissioners.

If at any stage in the course of conducting an investigation¹ a local commissioner² forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of the Parliamentary Commissioner, the Health Service Commissioner for England, or both, he may conduct an investigation jointly with that Commissioner or those Commissioners³. A local commissioner must obtain the consent of the person affected or the complainant, if any, before agreeing to a joint investigation referred⁴. Where the local commissioner forms the opinion that a complaint which is being investigated by the Parliamentary Commissioner, the Health Service Commissioner, or both, relates partly to a matter within his jurisdiction, he may conduct an investigation jointly with that Commissioner or those Commissioners⁵. If a local commissioner conducts an investigation jointly with another person, the requirements to make a report⁶ may be satisfied by a report made jointly with that person⁷.

- 1 le an investigation under the Local Government Act 1974 (see PARA 847 et seq).
- 2 As to local commissioners see PARA 839.
- 3 Local Government Act 1974 s 33ZA(1) (added by SI 2007/1889; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 9(1), (2)).

4 Local Government Act 1974 s 33ZA(2) (as added (see note 3); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 9(1), (3)).

5 Local Government Act 1974 s 33ZA(3) (as added: see note 3).

6 le a report under the Local Government Act 1974 s 30(1) (see PARA 860).

7 Local Government Act 1974 s 33ZA(4) (as added (see note 3); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 paras 1, 9(1), (4)). In relation to an investigation which has been conducted jointly with another person a direction given by the local commissioner under s 30(7) (see PARA 860) may relate only to those parts of a joint report prepared by virtue 33ZA(4) which are specified in the direction: s 33ZA(5).

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(6) INQUIRIES AND ARBITRATIONS

867. General power to direct inquiries.

Where the Secretary of State or the Welsh Ministers¹ is or are authorised by the Local Government Act 1972 to determine any difference, make or confirm any order, frame any scheme, give any consent, confirmation, sanction or approval to any matter, or otherwise to act, or where he is, or they are, authorised to hold an inquiry, whether under the 1972 Act or pursuant to any other Act affecting local authority functions, he, or they, may hold a local inquiry².

Where specific enactments impose a duty on a minister to hold an inquiry before arriving at a decision the provisions of the Tribunals and Inquiries Act 1992 apply to their conduct³. In particular, the Lord Chancellor has power, in consultation with the Council on Tribunals, to make rules regulating the procedure to be followed at inquiries⁴. In other cases, ministers have the power to promulgate rules for the procedure to be followed, and the Tribunals and Inquiries Act 1992 will not apply in such cases⁵.

1 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

2 See the Local Government Act 1972 s 250(1); and PARA 105. The decision whether or not such an inquiry should be held is a matter for the minister: the court will not substitute its own view but will only intervene on Wednesbury grounds: see *R v Secretary of State for the Environment, ex p Greenpeace Ltd* [1994] 4 All ER 352, [1994] 3 CMLR 737, QBD.

3 Eg the Town and Country Planning Act 1990 ss 77, 79 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 483; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 601); the Highways Act 1980 Sch 1 para 7 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 729); the Acquisition of Land Act 1981 Sch 1 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 572 et seq).

4 See the Tribunals and Inquiries Act 1992 s 9(1); **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 15.

5 See eg the Planning and Compulsory Purchase Act 2004 ss 8, 20; and **COMPULSORY ACQUISITION OF LAND**.

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868. Costs.

Where an inquiry is held under the Local Government Act 1972¹, the costs incurred by the Secretary of State or Welsh Ministers² are paid by such local authority or other party to the inquiry as he or they may direct; if he or they certify the amount of those costs and direct them to be paid, the sum is recoverable summarily as a civil debt from the party against whom the direction has been made³. A minister who instituted such an inquiry may also make orders as to the costs of the parties to the inquiry; such an order may be made a 'rule of the High Court' on the application of any party named in the costs order, so as to enable a party to obtain an assessment by the court of the amount of costs to be paid under such a costs order⁴.

1 le under the Local Government Act 1972 s 250 (see PARA 105).

2 As to the Secretary of State and the Welsh Ministers see PARAS 96-97.

3 See the Local Government Act 1972 s 250(4); and PARA 105.

4 Local Government Act 1972 s 250(5); and PARA 105. See also *R v Secretary of State for the Environment, ex p North Norfolk District Council* [1994] 2 PLR 78; *R v Secretary of State for the Environment, ex p Chichester District Council* [1993] 2 PLR 1; and *R v Secretary of State for the Environment, ex p Wakefield Metropolitan District Council* (1998) 75 P & CR 78.

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(7) JUDICIAL CONTROL

869. Judicial review.

Local authorities, as statutory corporations affected by the ultra vires doctrine, may act only within their powers¹; they are subject to the operation of domestic public law in general², the Human Rights Act 1998³ and applicable European Law⁴. In general, they are accordingly subject to control in public law by way of judicial review⁵. Certain types of relief are, moreover, not available in private law proceedings, so that the only procedure in such cases is by way of judicial review⁶; bringing a private law claim in order to avoid the special protections for public authorities under the judicial review procedure will furthermore, in general, be struck out as an abuse of process⁷. Conversely judicial review may not be used to seek monetary relief alone⁸ and will not generally be granted where there is an alternative remedy, such as a private law claim⁹.

1 See generally PARAS 460-461.

2 See generally **JUDICIAL REVIEW**.

3 See generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 See generally PARA 879.

5 As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

6 See CPR 54.2; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1530.

7 See *O'Reilly v Mackman* [1983] 2 AC 237, [1982] All ER 1124, HL; and **CIVIL PROCEDURE** vol 11 (2009) PARA 534.

8 See CPR 54.3(2); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1530.

9 See eg *R v East Berkshire Health Authority ex p Walsh* [1985] QB 152, CA.

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870. Statutory appeals.

There are a variety of circumstances under which legislation permits an applicant a statutory right of appeal against a decision of a local authority¹. Appeals lie under specific provision to tribunals², and to courts including county courts³ and magistrates' courts⁴. Such appeals may be either by way of review, that is appeals on a point of law where the decision is challenged on conventional public law grounds⁵, or by way of rehearing, that is a full merits-based review of the basis of the decision in which the judicial forum is vested with power to investigate for itself and draw the conclusions which it wishes to draw from evidence presented⁶.

1 See **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 19.

2 It is predominately, under the auspices of the Tribunals Service, which is divided into the Social Entitlement Chambers, dealing with, inter alia, social security and child support appeals and the Health, Education and Social Care Chamber, dealing with, inter alia, special educational needs and disability appeals: see the Tribunals, Courts and Enforcement Act 2007; the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684; and **ADMINISTRATIVE LAW**. Cf the expansion of the Tribunals Service to deal with other matters, such as the Lands Chamber to take over from the Lands Tribunal and the General Regulatory Chamber to bring together tribunals that hear appeals on regulatory issues: see eg Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307.

3 Eg appeals from homelessness decisions under the Housing Act 1996 Pt 7 (ss 175-218) (see **HOUSING** vol 22 (2006 Reissue) PARA 278 et seq).

4 Eg against abatement notices served under the Environmental Protection Act 1990 s 80 (see **NUISANCE** vol 78 (2010) PARA 199). Cf also the use of magistrates' courts for enforcement of local authority functions in relation to council tax, closure orders, anti-social behaviour orders etc (see **MAGISTRATES**).

5 Eg appeals against homelessness decisions under the Housing Act 1996 s 204 (see **HOUSING** vol 22 (2006 Reissue) PARA 295), which are appeals on a point of law where the court is not in the position of primary fact-finder, but is required to examine the decision of the authority in order to determine whether it was made lawfully; such appeals include not only matters of interpretation, but also the full range of issues which would otherwise be the subject of an application to the High Court for judicial review: *Nipa Begum v Tower Hamlets London Borough Council* [2000] 1 WLR 306, CA; affirmed in *Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5 at [7]; [2003] 2 AC 430 at [7], [2003] 1 All ER 731 at [7], per Lord Bingham of Cornhill.

6 It is appeals against council tax and housing benefit decisions are made to the First Tier Tribunal (Social Security and Child Support).

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871. Duty to abide with Convention rights.

It is unlawful for a public authority¹ to act in a way which is incompatible with rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms² and incorporated into domestic law by the Human Rights Act 1998³.

If a court or tribunal finds that a public authority has acted incompatibly with a right under the Convention for the Protection of Human Rights and Fundamental Freedoms⁴, it may grant such relief within its jurisdiction as it considers just and appropriate⁵.

1 As to the meaning of 'public authority' for these purposes see the Human Rights Act 1998 s 6(3); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq.

3 See the Human Rights Act 1998 s 6(1); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 6. The Convention rights are set out in the Human Rights Act 1998 Sch 1. As to defences see s 6(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq.

5 See the Human Rights Act 1998 s 8; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Thus the available remedies are limited to damages (where appropriate) and a declaration of legislative incompatibility.

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(8) CIVIL AND CRIMINAL LIABILITY

(i) Civil Liability of Local Authorities

872. General principles.

In general, the ordinary principles of law concerning civil liability are applicable to local authorities as to other persons¹. Local authorities may accordingly be directly liable in tort for breach of duties imposed on them or for torts they have authorised or ratified; they may also be vicariously liable for the actions of their employees². The exercise by an authority of statutory functions, however, may provide a defence of statutory authorisation³. Subject to the limitations of their powers and the provisions of the Local Government (Contracts) Act 1997, local authorities are bound by their contracts under ordinary principles of law⁴; claims in restitution may furthermore lie against them⁵.

1 As to the liability of local authorities and public bodies in general see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 179-195; as to the general liability in tort of public officers and public authorities see **TORT** vol 45(2) (Reissue) PARAS 844-846. As to liability under the Human Rights Act 1998 see generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 See generally **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 183 et seq.

3 See **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 191.

4 As to local authorities as parties to a contract see PARA 492 et seq.

5 As to restitution see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 181.

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873. Tortious liability in general.

The liability in tort of a local authority requires a recognised cause of action, such as breach of statutory duty¹ or negligence²; mere carelessness in performing a statutory duty or exercising a power is not sufficient to give rise to any liability³, though carelessness or unreasonableness might be sufficient to prevent an authority relying by way of defence on any authorisation it would otherwise have for its actions under statutory provisions⁴. Nor will failure to exercise discretionary powers in itself ordinarily give rise to any liability⁵. In the exercise of its statutory powers and duties a local authority must not, however, inflict on others damage which might be avoided by reasonable care⁶; but a claim may not generally be brought for damage resulting from the exercise of statutory functions if done without negligence⁷. For a civil claim to succeed in respect of matters arising out of the exercise of a statutory discretion there must be acts or omissions which take the action of the local authority outside the limits of the discretion⁸.

1 See PARA 874.

2 See PARA 875.

3 See *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 734-735, [1995] 3 All ER 353 at 367, HL, per Lord Browne-Wilkinson.

4 See *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1031, [1970] 2 All ER 294 at 301, HL per Lord Reid; *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 736, [1995] 3 All ER 353 at 368, HL, per Lord Browne-Wilkinson; *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at 570, [1999] 3 All ER 193 at 209-210, HL per Lord Slynn. See also **NEGLIGENCE** vol 78 (2010) PARA 18; **TORT** vol 45(2) (Reissue) PARA 845. As to statutory authorisation in general see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 191.

5 See *Stovin v Wise* [1996] AC 923 at 952-953, [1996] 3 All ER 801 at 827-828, HL per Lord Hoffmann. See also *Gorringe v Calderdale Metropolitan Borough Council* [2004] UKHL 15, [2004] 2 All ER 326, [2004] 1 WLR 1057 and generally **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 190.

6 See *Great Central Rly Co v Hewlett* [1916] 2 AC 511, 14 LGR 1015, HL. See also *Geddis v Bann Reservoir (Proprietors)* (1878) 3 App Cas 430, HL; *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74 at 97, [1940] 4 All ER 527 at 540, HL, per Lord Romer; *Dunlop v Woollahra Municipal Council* [1982] AC 158, [1981] 1 All ER 1202, PC.

7 See *Geddis v Bann Reservoir Proprietors* (1878) 3 App Cas 430 at 455-456, HL, per Lord Blackburn. See also *R v Knowsley Metropolitan Borough Council, ex p Maguire* [1992] NLJR 1375, 90 LGR 653 (no right to damages for local authority's maladministration); and *A v Essex County Court* [2003] EWCA Civ 1848, [2004] 1 WLR 1881, [2004] LGR 587 (local authority, acting as an adoption agency, failed to inform prospective adoptive parents of behavioural problems it was aware of in respect of a child, liable for damages). As to negligence in relation to the exercise of statutory powers by local authorities see **NEGLIGENCE** vol 78 (2010) PARAS 17-19; **TORT** vol 45(2) (Reissue) PARAS 323, 845-846.

8 See *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1068, [1970] 2 All ER 294 at 332, HL per Lord Diplock; *Anns v Merton London Borough Council* [1978] AC 728 at 755, [1977] 2 All ER 492 at 501, HL per Lord Wilberforce. As to actions taken by a local authority which are outside the limits of the discretion see PARA 461.

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874. Breach of statutory duty.

In the absence of express provision giving rise to a claim for damages, it is necessary to show as a matter of statutory construction that Parliament imposed a statutory duty for the benefit of a limited class of the public, and that it intended that a breach should give rise to a private law action for damages; the starting point, however, is that ordinarily a breach of statutory duty does not by itself give rise to any private law cause of action¹. In the absence of any general rule for determining whether there is such a right of action, there are a number of indicators: where a statute conferring powers or imposing duties provides a specific remedy, by prosecution, penalties or specific provision for compensation or otherwise, a common law action for an injunction or for damages will not ordinarily lie², though this is not decisive where on consideration of the scope and language of the statute it is established that its scheme is for the benefit of particular persons or classes of persons³; however, the absence of provision for any such specific remedy may indicate that a civil claim for damages will lie⁴. Statutory schemes for general social welfare⁵, housing benefit⁶, abatement of statutory nuisances⁷ and provision of water for fire-fighting⁸ have each been held not to give rise to a right of action for damages.

1 *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 731, [1995] 3 All ER 353 at 355, HL, per Lord Browne-Wilkinson. As to breach of statutory duty generally, see **TORT** vol 45(2) (Reissue) PARA 395 et seq; see also **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 186. See further *R (on the application of Sanders) v Harlow District Council* [2009] All ER (D) 86 (Mar).

2 See *Doe d Bishop of Rochester v Bridges* (1831) 1 B & Ad 847; *Pasmore v Oswaldtwistle UDC* [1898] AC 387, 62 JP 628, HL. See also *Phillips v Britannia Hygienic Laundry Co Ltd* [1923] 2 KB 832, 21 LGR 709, CA; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL; and PARA 460.

3 *Black v Fife Coal Co Ltd* [1912] AC 149, HL; *Groves v Lord Wimborne* [1898] 2 QB 402, CA.

4 See *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407, [1949] 1 All ER 544 at 548, HL, per Lord Simonds, and at 413 and 551 per Lord Normand; *Gateshead Union Guardians of the Poor v Durham County Council* [1918] 1 Ch 146 at 167, CA, per Scrutton LJ; *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626, [1979] 2 All ER 349, CA. See also *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 FCR 102, HL.

5 *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 FCR 102, HL.

6 *Haringey London Borough Council v Cotter* (1996) 29 HLR 682, CA.

7 *Issa v Hackney London Borough Council* [1997] 1 All ER 999, [1997] 1 WLR 956, CA.

8 *Capital & Counties plc v Hampshire County Council* [1997] QB 1004, [1997] 2 All ER 865, CA.

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875. Negligence.

Liability in negligence depends upon establishing a relevant duty of care requiring, in addition to sufficient proximity of relationship between the claimant and the local authority and foreseeability of damage, that the imposition of the duty be fair, just and reasonable¹. A duty is not to be imposed, however, where this would be inconsistent with an authority's statutory functions²; furthermore, decision-making in the exercise of a statutory discretion may involve considerations not justiciable by the courts so that no liability can arise³.

1 *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL. See also *Caparo Industries Plc v Dickman* [1990] 2 AC 605, [1990] 1 All ER 568, HL; *Rowling v Takaro Properties* [1988] AC 473, [1988] 1 All ER 163, PC; *Hill v Chief Constable of West Yorkshire* [1989] AC 53, [1988] 2 All ER 238, HL. As to negligence generally see **NEGLIGENCE**.

2 *Trent Strategic Health Authority v Jain* [2009] UKHL 4, [2009] 1 All ER 957, [2009] 2 WLR 248.

3 'It is only where what is done has involved the weighing of competing public interests or has been dictated by considerations on which Parliament could not have intended that the courts would substitute their views for the views of ministers or officials that the court will hold that the issue is non-justiciable on the ground that the decision was made in the exercise of a statutory discretion': see *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619 at 653, [2004] 4 All ER 504 at 517 at HL, per Lord Slynn. 'The greater the element of policy involved, the wider the area of discretion accorded, the more likely it is that the matter is not justiciable so that no action in negligence can be brought': see *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at 571, [1999] 3 All ER 193 at 211 HL, per Lord Slynn.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(8) CIVIL AND CRIMINAL LIABILITY/(i) Civil Liability of Local Authorities/876. Misfeasance in public office.

876. Misfeasance in public office.

The tort of misfeasance in public office may be committed by a local authority either directly or vicariously through its officers or members¹. The tort involves the unlawful exercise of power as a public officer where either (1) the conduct is intended to injure another or (2) action is taken knowing or being reckless that there was no power to do so and that the action will probably injure the claimant². It is a question of fact as to whether a sufficient connection can be established between the conduct complained of, the public office held and the power exercised³. Proof of misfeasance in the decision of an authority taken on a vote of its members required showing that a majority of those voting did so with the object of harming the claimant⁴.

1 *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, sub nom *Three Rivers District Council v Bank of England* [2000] 3 All ER 1, HL; *Jones v Swansea City Council* [1990] 3 All ER 737, [1990] 1 WLR 1453; *Dunlop v Woollahra Municipal Council* [1982] AC 158, [1981] 1 All ER 1202, PC; *Bourgoin SA v Ministry of Agriculture, Fisheries and Food* [1986] QB 716, [1986] All ER 585, CA; and *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL. As to the tort generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 188. See also the broadly analogous offence of misconduct in public office: **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 536.

2 *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, sub nom *Three Rivers District Council v Bank of England* [2000] 3 All ER 1, HL.

3 *Cornelius v Hackney London Borough Council* [2002] EWCA Civ 1073, [2003] LGR 178 (claim not struck out as requiring full exploration of the facts on this issue).

4 *Jones v Swansea City Council* [1990] 3 All ER 737, [1990] 1 WLR 1453.

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(ii) Civil Liability of Members and Officers

877. Generally.

Members and officers may be liable personally for their conduct, separately from any direct liability of their authorities, although in tort the latter will usually be vicariously liable for that conduct¹. There is, however, wide-ranging protection and indemnification from liability for members and officers².

¹ As to the liability of members see PARA 226. As to officers see *Burgoine v Waltham Forest London Borough Council* (1996) 95 LGR 520, ChD (officers not protected by indemnity); *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA (no personal duty of registrar); as to public officers generally see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 185. The vicarious liability of an authority for an officer's tort depends on the employee also being liable, for example through negligence in discharging a professional duty of care owed directly to another: see eg *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619, [2000] 4 All ER 504, HL. As to vicarious liability of authorities see generally **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 184.

² See PARAS 226-229.

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(iii) Criminal Liability**878. Generally.**

There are a number of criminal offences specific to public officers, applicable to local government, for the prevention of corruption and misconduct in office¹. It is additionally a summary offence for an officer of a local authority under colour of his office or employment to accept any fee or reward other than his proper remuneration².

¹ See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 528-530, 532, 536.

² See the Local Government Act 1972 s 117(2); and PARA 441.

Halsbury's Laws of England/LOCAL GOVERNMENT (VOLUME 69 (2009) 5TH EDITION)/7. CONTROL AND ACCOUNTABILITY OF LOCAL AUTHORITIES/(9) EUROPEAN UNION LAW/879. In general.

(9) EUROPEAN UNION LAW**879. In general.**

Although the constitutional mechanism of local government is not directly affected by European Union law, the implementation of European Union Directives in national law has an impact upon the exercise of local authority functions¹. Issues relating to public procurement², competition³ and state aids⁴, planning⁵, and employment of officers⁶, in particular, are all directly affected. Moreover, European Union legislation can be relevant even in relation to the exercise of some functions that do not expressly derive from it⁷.

In addition, an individual may rely on certain provisions of EU law in any action against the state⁸, which has been said to include 'all organs of the administration, including decentralised authorities such as municipalities'⁹. Local authorities fall within this definition and are susceptible to a challenge to the exercise of their functions based on EU law¹⁰.

Local authorities are also subject to the principle of proportionality, a key concept deployed by the European Court of Justice, which requires that the means employed to achieve a given aim both corresponds to the importance of that aim and is necessary for its achievement¹¹.

1 As to the primacy of European Union law see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 24.

2 Public procurement is governed by the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 28 (as renumbered by virtue of the Treaty of Amsterdam (see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (the 'EC Treaty'): Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 81), which prohibits quantitative restrictions upon imports between member states and all measures having equivalent effect: see further **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 19. See also PARA 418 et seq.

3 As to the principal anti-competition control see the EC Treaty art 81 (as renumbered: see note 2); and **COMPETITION** vol 18 (2009) PARA 61 et seq.

4 As to state aids see the EC Treaty art 87 (as renumbered: see note 2); and **COMPETITION** vol 18 (2009) PARA 25 et seq.

5 See, eg, the Town and County Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, which was made for the purpose of implementing EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) (as amended by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05) and by European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17)) on the assessment of the effects of certain public and private projects on the environment; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 10.

6 See, eg, as to the free movement of workers, the EC Treaty art 39 (as renumbered: see note 2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 437. See also, as to equal rights of pay the EC Treaty art 141 (as renumbered: see note 2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 419 et seq.

7 See, eg, eligibility for assistance under the Housing Act 1996 Pts 6, 7 (see **HOUSING**) which is dependent on the rights of EU workers.

8 See Case 26/62 *NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen* [1963] ECR 1, [1963] CMLR 105, ECJ; and Case 152/84 *Marshall v Southampton and South West Area Health Authority (Teaching)* [1986] QB 401, [1986] 2 All ER 584, [1986] ECR 723, ECJ.

9 See Case 103/88 *Fratelli Costanzo SpA v Comune di Milano* [1989] ECR 1839 at [31], [1990] 3 CMLR 239 at [31]. As to the Welsh Assembly see the Government of Wales Act 1998 s 106; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

10 See, in a domestic context, *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] QB 815, [1987] 1 All ER 564 (the test for non-statutory bodies' amenability to judicial review); *Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2001] EWCA Civ 595, [2002] QB 48, [2001] 4 All ER 604.

See further, as to the meaning of 'public authority' for the purposes of the Human Rights Act 1998, *R (on the application of Heather) v Leonard Cheshire Foundation* [2002] EWCA Civ 366, [2002] 2 All ER 936; *R (on the application of A) v Partnerships in Care Ltd* [2002] EWHC 529 (Admin), [2002] 1 WLR 2610; *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37, [2004] 1 AC 546, [2003] 3 All ER 1213; *R (on the application of Beer (t/a Hammer Trout Farm) v Hampshire Farmers' Market Ltd* [2003] EWCA Civ 1056, [2004] 1 WLR 233; and *YL v Birmingham City Council* [2007] UKHL 27, [2008] 1 AC 95, [2007] 3 All ER 957.

11 See **JUDICIAL REVIEW** vol 61 (2010) PARA 618.